S. Hrg. 98-989

SOUTHEAST INTERSTATE LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT COMPACT

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

ON

S. 1749

A BILL TO GRANT THE CONSENT OF THE CONGRESS TO THE SOUTHEAST INTERSTATE LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT COMPACT

Columbia, South Carolina

SEPTEMBER 6, 1983

Serial No. J-98-66

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE
33-342 O WASHINGTON : 1984

S521-67

COMMITTEE ON THE JUDICIARY

STROM THURMOND, South Carolina, *Chairman*

CHARLES McC. MATHIAS, Jr., Maryland
PAUL LAXALT, Nevada
ORRIN G. HATCH, Utah
ROBERT DOLE, Kansas
ALAN K. SIMPSON, Wyoming
JOHN P. EAST, North Carolina
CHARLES E. GRASSLEY, Iowa
JEREMIAH DENTON, Alabama
ARLEN SPECTER, Pennsylvania

JOSEPH R. BIDEN, Jr., Delaware
EDWARD M. KENNEDY, Massachusetts
ROBERT C. BYRD, West Virginia
HOWARD M. METZENBAUM, Ohio
DENNIS DeCONCINI, Arizona
PATRICK J. LEAHY, Vermont
MAX BAUCUS, Montana
HOWELL HEFLIN, Alabama

VINTON DeVANE LIDE, *Chief Counsel and Staff Director*
DEBORAH K. OWEN, *General Counsel*
SHIRLEY J. FANNING, *Chief Clerk*
MARK H. GITENSTEIN, *Minority Chief Counsel*

CONTENTS

OPENING STATEMENTS

Page

Thurmond, Sen. Strom (chairman) ... 1

Derrick, Rep. Butler, 3d District, South Carolina ... 4

Hollings, Sen. Ernest F ... 9

Warner, Sen. John W ... 10

PROPOSED LEGISLATION

Text of S. 1749—A bill to grant the consent of the Congress to the Southeast Interstate Low-Level Radioactive Waste Management Compact ... 98

CHRONOLOGICAL LIST OF WITNESSES

Riley, Hon. Richard W., Governor, State of South Carolina ... 11

Setzler, Hon. Nikki G., State senator, State of South Carolina ... 12

Keyserling, Hon. Harriet H., State representative, State of South Carolina ... 13

Caggiano, Frank, representing Hon. L. Marion Gressette, president pro tempore, State of South Carolina ... 13

Hodes, Dr. Richard S., chairman, Southeast Interstate Low-Level Radioactive Waste Management Commission, Atlanta, GA ... 26

Briner, Capt. William H., secretary/treasurer, Southeast Interstate Low-Level Radioactive Waste Management Commission, Atlanta, GA ... 28

Panel consisting of: Michael F. Lowe, director, Palmetto Alliance; Evelyn J. Bush, citizen; Dr. Mary T. Kelly, executive vice-president, League of Woman Voters of South Carolina; all from Columbia, SC ... 36

Thomas, Ruth, on behalf of an Ad Hoc Committee of Citizens of South Carolina ... 42

Panel consisting of: Dr. Franklin E. Coffman, Director, Office of Terminal Waste Disposal; and Remedial Action, Office of Nuclear Energy, Department of Energy; and G. Wayne Kerr, Director, Office of State Programs, Nuclear Regulatory Commission; both of Washington, DC ... 46

Panel consisting of: David Ebenhack, vice president for regulatory affairs and Don Fowler, consultant, both of Chem-Nuclear Systems, Inc., South Carolina ... 73

ALPHABETICAL LISTING AND MATERIALS SUBMITTED

Briner, William H.: Testimony ... 28

Bush, Evelyn J.: Testimony ... 38

Caggiano, Frank: Testimony ... 13

Coffman, Franklin E.:
- Testimony ... 46
- Prepared statement ... 49
- Responses to written questions submitted by Chairman Thurmond ... 54

Ebenhack, David:
- Testimony ... 73
- Responses to written questions submitted by Chairman Thurmond ... 92

Fowler, Don: Testimony ... 75

Hodes, Richard S.:
- Testimony ... 26
- List of members to the Southeast Interstate Low-Level Radioactive Waste Management Commission ... 32

Kelly, Mary T.: Testimony ... 41

ALPHABETICAL LISTING AND MATERIALS SUBMITTED—Con.

Page
Kerr, G. Wayne:
  Testimony 47
  Responses to written questions submitted by Chairman Thurmond 66
Keyserling, Harriet H.: Testimony 13
Lowe, Michael F.: Testimony 36
Riley, Richard W.: Testimony 11
Setzler, Nikki G.:
  Testimony 12
  Data Sheets—Volume of federally generated waste 18
Thomas, Ruth:
  Testimony 42
  Proposed amendment to S. 2185 44

APPENDIX

Letter to Chairman Thurmond from Douglas W. Booth, president and chief operating officer, Duke Power Co., dated August 25, 1983, in support of S. 1749 77
Letter and statement of J.J. Scoville, US Ecology, Inc., dated August 31, 1983 78
Letter and statement of Patricia T. Marcotsis, vice president, governmental and regulatory affairs, South Carolina Electric & Gas Co., dated September 1, 1983, in support of S. 1749 86
Prepared statement of Peggy Ogburn, representing the Kershaw County Safe Energy Project, dated September 6, 1983 88
Prepared statement of the American College of Nuclear Physicians, dated September 6, 1983, in support of S. 1749 89
Letter and statement of Sherwood H. Smith, Jr., chairman/president, Carolina Power & Light Co., dated September 6, 1983, in support of S. 1749 91
Responses from Chem-Nuclear Systems, Inc., to written questions submitted by Chairman Thurmond 92
Text of S. 1749 98

SOUTHEAST INTERSTATE LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT COMPACT

TUESDAY, SEPTEMBER 6, 1983

U.S. Senate,
Committee on the Judiciary,
Columbia, SC.

The committee met, pursuant to notice, at 11 a.m., in the Senate Chamber, The State House, Columbia, S.C., Hon. Strom Thurmond (chairman of the committee) presiding.

The Chairman. The meeting will come to order.

I am very honored to have come before the committee Governor Riley. Governor, if you would like to bring anyone else up with you, please do so. We have a number of people that plan to testify today. Senator Setzler, Representative Keyserling, and Senator Gressette may wish to join you.

Governor Riley. Senator, I think Senator Gressette will submit a statement through Frank Caggiano. I would like to present my statement after which Senator Nikki Setzler would present his statement.

Senator Setzler was one of our negotiators on the compact and also a commissioner of the compact.

Representative Harriet Keyserling would give a statement following Senator Setzler, and Harriet is also a negotiator of the compact, and an alternate commissioner on the compact, and Frank Caggiano and Dr. John Stucker join me as staff of all of us.

Mr. Chairman, would you like for me to proceed?

The Chairman. Congressman Derrick was supposed to have been here, but he sent word he couldn't come. He sent a statement, however, and without objection, that statement will be placed in the record. I also have statements to be placed in the record from Senator Hollings and Senator Warner of Virginia.

I have an opening statement that I wish to make, and then we will proceed to your statement.

OPENING STATEMENT OF CHAIRMAN STROM THURMOND

I am pleased to welcome everyone to our hearing today on S. 1749, a bill to grant the consent of Congress to the Southeast Interstate Low-Level Radioactive Waste Management Compact. I introduced S. 1749 on August 3 of this year, on behalf of myself and Senators Hollings, Baker, Helms, East, Trible, Warner, Chiles, and Stennis. Congressman Derrick introduced companion legislation, H.R. 3777, in the House of Representatives on the same day. S. 1749 has been referred to the Committee on the Judiciary, of which I am chairman, because our committee has jurisdiction, pursuant to Senate rules, over interstate compacts.

The Southeast Compact, as well as other regional compacts addressing the issue of low-level waste disposal, is the result of a process which was initiated by passage of the Low-Level Radioactive Waste Policy Act of 1980. This act, Public Law 96–573, established the policy that each State is responsible for disposal of the commercial waste generated within its borders, and that such waste can be most safely and efficiently managed on a regional basis. It authorized States to enter into interstate compacts to establish and operate regional disposal facilities for low-level waste. The act also required subsequent approval of the compacts by the Congress, a step which would have been required in any event by article I, section 10, clause 3, of the Constitution, which provides that "no State shall, without consent of Congress * * * enter into any agreement or compact with any other States * * *." Perhaps the most significant provision of the act was the authority given to a congressionally-approved compact to exclude waste generated outside that compact region after January 1, 1986.

Passage of the Low-Level Radioactive Waste Policy Act was a major step toward addressing a problem which had previously received far less attention than the issues of high-level waste disposal and interim storage of commercial spent fuel. The act made clear, for the first time, that all States bore equal responsibility in the area of low-level waste disposal. Enactment of this legislation was an important beginning in rectifying a clearly unacceptable situation in which three States—Washington, Nevada, and especially South Carolina—shouldered the burden of disposing of waste generated by all 50 States. Its passage was facilitated by the actions, in 1979, of the States of Washington and Nevada, which temporarily closed their sites, and of South Carolina, which announced a significant reduction in the amount of waste which would be accepted at the Barnwell site. A crisis was averted when the Washington and Nevada sites were reopened in late 1979; but a clear warning signal had been sent to the other States and to the Federal Government that action correcting an inequitable and untenable situation needed to be taken.

In response to these events, I offered an amendment regarding low-level waste disposal to S. 2189, the high-level waste disposal bill considered by the Senate in the summer of 1980. My amendment, a precursor to the Low-Level Policy Act, authorized and encouraged States to enter into interstate compacts for the disposal of low-level waste on a regional basis. It also gave compacts entered into pursuant to that provision the authority to exclude waste generated outside the compact area as of the date of congressional approval. Congressman Derrick pursued similar legislation in the House and secured its inclusion in the House nuclear waste bill. In December of 1980, when the House and Senate were unable to agree on portions of the bills dealing with high-level waste disposal, the low-level waste disposal provisions were split out of the larger bills and enacted into law.

The States have, for the most part, responded promptly and in good faith to the mandate of the Policy Act. Six regional groups—the Northeast, Southeast, Midwest, Central, Northwest, and Rocky Mountain regions—have been organized. Compacts have been negotiated in each of the six regions, and most have been introduced in or ratified by the various State legislatures. Two of the compacts, the Northwest and the Central States Compacts, had already been submitted to Congress prior to introduction of the Southeast compact. I anticipate that a fourth compact, the Rocky Mountain compact, will be submitted to Congress within the month. It is my present intention to complete Senate Judiciary Committee hearings on the compacts this fall and to place the ratifying legislation on the committee agenda for action as soon thereafter as practicable.

I believe it is of vital importance that Congress promptly consider and consent to the compacts in order to maintain the momentum which the States have generated toward resolution of the low-level waste disposal issue. Approval of the compacts would allow the States to begin the actual process of siting, constructing, and licensing new sites for their respective regions. The establishment of such a regional system of sites is the only equitable way to allocate the burden of low-level waste disposal.

For South Carolina, congressional consent to the Southeast compact means the legal capability, as of January 1, 1986, to significantly limit the amount of waste coming into the Barnwell site. It also means an end to our serving as a regional facility no later than December 1, 1992. South Carolina has, for far too long, shouldered a disproportionate share of the burden for disposing of radioactive waste generated by the entire Nation. The time has come for this situation to change; and I believe that the compacting process, which I helped to initiate in 1980, offers the best and most certain means of effecting that change with regard to low-level waste. At the same time, plans are moving ahead for the safe disposal of high-level commercial waste pursuant to the Nuclear Waste Policy Act of 1982, as well as for the safe disposal of defense nuclear waste at the Savannah River plant, with the construction of the defense waste processing facility. After years of hard work in Congress and by the States, I am pleased that we now have in place the basic policies necessary for a comprehensive solution to our Nation's radioactive waste problems.

I would like to thank all of our distinguished witnesses who have agreed to present testimony today. I am sure that your comments and observations will prove extremely helpful to the committee in its consideration of the Southeast Compact.

I might add that it is a pleasure to have the hearing in South Carolina and to see so many familiar faces in the audience.

I am very pleased, as I stated, to have Governor Riley and other State officials here. We will now proceed to hear the distinguished Governor.

[Statements follow:]

BUTLER DERRICK
3rd District, South Carolina

James W. Bradford, Jr.
Administrative Assistant

201 Cannon House Office Building
Washington, D.C. 20515
(202) 225-5301

Committees:
RULES
BUDGET
SELECT COMMITTEE ON AGING

Congress of the United States
House of Representatives
Washington, D.C. 20515

District Offices:
Post Office Box 4128
Anderson, South Carolina 29622
(803) 224-7401

District Manager
BARBARA GAINES

5 Federal Building
211 York Street, N.E.
Aiken, South Carolina 29801
(803) 649-5571

129 Federal Building
Greenwood, South Carolina 29648
(803) 223-8251

September 6, 1983

The Honorable Strom Thurmond
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Due to unforeseen medical circumstances, I will be unable to participate in today's hearing before the Senate Judiciary Committee on S.1749, a bill to grant the consent of Congress to the Southeast Interstate Low-Level Radioactive Waste Management Compact.

As you well know, this legislation is a top priority and I want to do all that I can to see that it is enacted in an expeditious manner. In fact, I introduced the House companion bill to this measure shortly before the Congress recessed in August and plan to work for its early approval as well.

Mr. Chairman, I respectfully request that my written testimony be included in the record of today's proceedings. I know that you will have a very successful and informative hearing and again regret that I cannot be with you.

With kind personal regards, I am

Respectfully,

Butler Derrick

BUTLER DERRICK
Member of Congress

D/lj

6 SEPTEMBER, 1983

TESTIMONY OF THE HONORABLE BUTLER DERRICK
BEFORE THE SENATE COMMITTEE ON THE JUDICIARY
CONCERNING S 1749, A BILL TO GRANT THE CONSENT OF CONGRESS TO THE SOUTHEAST INTERSTATE LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT COMPACT

MR. CHAIRMAN:

IT IS INDEED A PRIVILEGE TO APPEAR BEFORE YOUR COMMITTEE TODAY AND OFFER TESTIMONY ON S 1749, LEGISLATION WHICH YOU HAVE RECENTLY INTRODUCED IN THE U.S. SENATE TO GRANT THE CONSENT OF CONGRESS TO THE SOUTHEAST INTERSTATE LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT COMPACT.

AS I KNOW YOU ARE AWARE, I HAVE INTRODUCED SIMILAR CONSENT LEGISLATION IN THE U.S. HOUSE OF REPRESENTATIVES, H.R. 3777. TO DATE, MY BILL HAS BEEN REPORTED TO THE HOUSE COMMITTEES ON INTERIOR AND INSULAR AFFAIRS, AND ENERGY AND COMMERCE.

MR. CHAIRMAN, THE IMPORTANCE OF THIS LEGISLATION TO OUR STATE CANNOT BE OVEREMPHASIZED. MOREOVER, THE COMPACT SET FORTH IN BOTH S 1749 AND H.R. 3777 REPRESENTS THE FIRST ATTEMPT TO THOROUGHLY ADDRESS THE IMPACT OF LOW-LEVEL RADIOACTIVE WASTE DISPOSAL IN SOUTH CAROLINA AND THE SOUTHEAST REGION, MOVING TOWARDS A SYSTEM PREDICATED ON REGIONAL DISPOSAL---A SYSTEM WHICH WILL ULTIMATELY PROVE FAR MORE EFFICIENT AND EQUITABLE.

PRESENTLY, THE CHEM-NUCLEAR SERVICES, INC. FACILITY AT BARNWELL, SOUTH CAROLINA, IS ONE OF ONLY THREE LICENSED AND OPERATING COMMERCIAL LOW-LEVEL RADIOACTIVE WASTE DISPOSAL FACILITIES IN THE NATION, AND ONE OF ONLY TWO RECEIVING MOST OF THESE MATERIALS FOR DISPOSAL. THIS SITUATION HAS RESULTED IN AN INORDINATE BURDEN UPON THE CITIZENS OF SOUTH CAROLINA. WE HAVE AND CONTINUE TO RECEIVE SHIPMENTS OF LOW-LEVEL RADIOACTIVE WASTES FROM THROUGHOUT THE EASTERN UNITED STATES FOR DISPOSAL AT THE BARNWELL SITE.

THE CONCEPT OF REGIONAL DISPOSAL OF THESE MATERIALS WAS ADOPTED AS FEDERAL POLICY WITH PASSAGE OF THE LOW-LEVEL RADIOACTIVE WASTE POLICY ACT OF 1980 (P.L. 96-573). I AM PLEASED TO HAVE PLAYED A ROLE IN SECURING PASSAGE OF THIS LEGISLATION. AS YOU KNOW, THE LOW-LEVEL WASTE PROVISIONS, ALTHOUGH UNCONTROVERSIAL IN THEMSELVES, WERE ENMESHED IN A LARGER AND FAR MORE CONTROVERSIAL DISPUTE ON COMPREHENSIVE NUCLEAR WASTE POLICY LEGISLATION IN 1980---A LEGISLATIVE SITUATION WHICH WAS NOT FULLY RESOLVED UNTIL LATE LAST YEAR. WITH YOUR ABLE ASSISTANCE, MR. CHAIRMAN, WE WERE ABLE TO SEPARATE THE LOW-LEVEL WASTE PROVISIONS FROM THE COMPREHENSIVE NUCLEAR WASTE DISPOSAL BILL AND SECURE THEIR PASSAGE IN THE WANING DAYS OF THE 96TH CONGRESS. PASSAGE OF THE LOW-LEVEL WASTE POLICY ACT OF 1980 MARKED a milestone in the effort to provide reasonable limits on the importation and disposal of low-level radioactive wastes in South Carolina.

In a sense, Mr. Chairman, the legislation we are considering today represents the second milestone in these efforts. What we have before us today is the final product of several years of difficult work and intensive negotiations to forge an agreement between the states of the Southeast region to form a compact among themselves to manage and dispose of those low-level radioactive wastes which will be generated within the region. Assuming Congressional consent to this compact, the Southeast region will be able to prohibit the importation of low-level wastes from outside the region on January 1, 1986.

Under the terms of the Southeast Interstate Low-Level Radioactive Waste Management Compact, the Chem-Nuclear Services, Inc. burial site in Barnwell County will serve as the first regional disposal site for the Southeast region. This will return the Barnwell site to its original and intended use, as a regional disposal facility. The compact makes the states of Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia initially eligible parties to the Southeast Compact.

Although the Barnwell facility will serve as the first disposal site for the Southeast region, it is important to note that the Compact we are today considering will also exclude its use after 1992. At that point, another member of the Southeast region will have to come forward and offer a site within their state to serve as the regional disposal site.

As you know, the compact also establishes the Southeast Interstate Low-Level Radioactive Waste Management Commission. I am pleased to note that you will be receiving testimony today from the first chairman of the commission, Dr. Richard S. Hodes, and I would therefore like to take this opportunity to offer my assistance in the future endeavors of both Dr. Hodes and the commission members as they undertake their considerable responsibilities over the coming years.

Moreover, I believe the compact's requirements for equal commission representation by member states, as well as the operating procedures and eporting requirements of the commission, will serve to ensure that their deliberations will be pursued in an equitable and straightforward manner. t should also be noted that as the original host state for the Southeast egional disposal site, South Carolina will be afforded additional and xclusive powers within the commission to control the importation of low-level wastes from outside the Southeast region after January 1, 1986.

Mr. Chairman, the third and final milestone we must surpass in the effort o provide reasonable limits on the importation and disposal of low-level adioactive wastes in South Carolina will be Congressional approval of the egislation we are today considering. For it is only with the consent of ongress that this compact, which will provide protections for South Carolina, ill have the force of law.

As you are no doubt aware, legislation is presently pending before the ongress seeking consent for both the Northeast and Central States Interstate Compacts. Several other compacts are in various stages of development around the country. It is imperative, however, that the Congress move forward with all deliberate speed to act on those compacts which have already been submitted for consent. Ultimately, as the January 1, 1986 date on which we may exclude out-of-state wastes approaches, pressure will come to bear on those regions which have not concluded their efforts to organize regional compacts and establish waste disposal sites. And to the extent that this pressure is a prerequisite for this action, it will be necessary to approve those compacts presently pending in Congress in order to allow enforcement of the 1986 deadline.

Mr. Chairman, I introduced H.R. 3777 in the House of Representatives on August 3rd. On the day it was introduced, 19 of my colleagues in the House from states eligible for membership in the Southeast Compact joined me as cosponsors. I am especially pleased to note that the entire House delegation from South Carolina is sponsoring this measure along with me. When the Congress reconvenes from the current recess, I will be adding several more members as cosponsors of my bill. Ultimately, it is my hope to have as many of the 77 Congressman from these states as possible join as cosponsors of this consent legislation.

As noted at the outset of my remarks, H.R. 3777 is presently pending in the House Committees on Interior and Insular Affairs, and Energy and Commerce. It is my understanding that both of these committees will be holding hearings on these consent bills either this fall, or by the early part of next year. Mr. Chairman, to the extent that you are able to facilitate consideration of the matters in the Senate, I am sure your deliberations will provide incentives for the Chairmen of the committees of the House to move forward with these bills in a similar expeditious manner.

It is possible that there may be individuals in the Congress who will want to delay or impede action on this legislation as a means of preserving

A DISPOSAL SITE OPTION IN THE EVENT THAT THE REGION THEY REPRESENT IS UNABLE TO REACH AGREEMENT ON THEIR COMPACT AND DISPOSAL SITE. I BELIEVE SUCH A POSITION IS EXTREMELY SHORTSIGHTED. THE LOW-LEVEL WASTE POLICY ACT OF 1980 PLACES ULTIMATE RESPONSIBILITY FOR THE DISPOSAL OF LOW-LEVEL WASTES ON EACH STATE, URGES THE FORMATION OF REGIONAL COMPACTS FOR THE EFFICIENT AND SAFE MANAGEMENT OF THESE MATERIALS, AND SETS JANUARY 1, 1986 AS THE DEADLINE BY WHICH THESE ACTIVITIES ARE TO BE ACCOMPLISHED.

SOUTH CAROLINA HAS MET ITS COMMITMENT TO THIS LAW, IT HAS ACCEPTED A SUBSTANTIAL RESPONSIBILITY AS THE HOST FOR THE FIRST SOUTHEASTERN REGIONAL LOW-LEVEL WASTE DISPOSAL SITE, AND I INTEND TO USE MY POSITION WITHIN THE CONGRESS TO ENSURE THAT THESE AGREEMENTS ASSUME THE FORCEOF LAW WITH PASSAGE OF THE SOUTHEAST INTERSTATE LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT COMPACT CONSENT LEGISLATION.

MR. CHAIRMAN, FOR THESE REASONS, I WHOLEHEARTEDLY ENDORSE YOUR EFFORTS TO OPEN CONGRESSIONAL DEBATE ON THESE ISSUES, AND URGE YOU TO PURSUE THE LEGISLATIVE PROCESS YOU HAVE BROUGHT TO SOUTH CAROLINA TODAY. I AM REASSURED OF THE COMMITMENT AND LEADERSHIP ROLE OUR STATE HAS TAKEN ON THIS ISSUE BY THE PRESENCE OF GOVERNOR RILEY, SENATOR SETZLER AND REPRESENTATIVE KEYSERLING AT THESE HEARINGS TODAY. MR. CHAIRMAN, BE ASSURED OF MY CONTINUED AND ACTIVE SUPPORT IN GAINING PASSAGE OF THIS LEGISLATION.

####

STATEMENT OF SENATOR ERNEST F. HOLLINGS (D-S.C.)
JUDICIARY COMMITTEE HEARING ON S. 1749
COLUMBIA, SOUTH CAROLINA
SEPTEMBER 6, 1983

I am pleased to support S. 1749, the bill to grant Congressional consent to the Southeast Interstate Low-Level Radioactive Waste Management Compact. Establishing this compact is an important step in our efforts to deal with the problem of low-level nuclear waste.

In my view, this is a fair and effective compact.

In the first place, it follows the principle that Congress set forth in 1980: each state and region is responsible for managing its own low-level waste. The states of the Southeast have now accepted their part of this responsibility and have formed this compact. In return, the 1980 law provides that no state -- including no Southeast state -- need accept waste from outside of its compact area after January 1, 1986. This is a sound and equitable appproach.

Second, this compact is fair to South Carolina. Our state agrees to take waste from other Southeast states for a few years more. But in return, South Carolina will receive compensation from the other states. More importantly, the compact explicitly calls for another site outside of our state to be chosen within three years and to be licensed and ready to operate no later than 1991. And in no event is the existing Barnwell site to serve as the region's disposal facility beyond December 31, 1992. This arrangement is a big improvement over today's situation, where South Carolina ends up with nuclear garbage from all over the Eastern United States.

Mr. Chairman, I intend to review the implementation of this compact carefully. In particular, I want to examine all safety and environmental questions associated with the Barnwell facility. And I will carefully review the points made at today's hearing. But in general I am very satisfied with the compact itself; it is a significant improvement over the present situation. I look forward to working with you, Mr. Chairman, and with other members of the South Carolina Congressional delegation to secure House and Senate approval of this compact.

STATEMENT OF THE HONORABLE JOHN W. WARNER ON S. 1749

"The Southeast Low-Level Radioactive Waste Management Compact"

As a co-sponsor of S. 1749, I strongly support the legislation which would grant the consent of Congress to the Southeast Interstate Low-Level Radioactive Waste Management Compact.

The southeastern compact is the product of intensive negotiations among the states and represents our region's commitment to the national policy expressed in the Low-Level Radioactive Waste Policy Act of 1980. It is important to all southeastern states because it provides for the first time a framework for the orderly regional disposal of low-level radioactive waste.

The disposal of low-level radioactive waste is best managed on a regional basis which will provide better protection for the public health at the least cost.

Approval of this compact will be a milestone in the long-term resolution of the permanent disposal of low-level radioactive waste which is so important to our future growth and economic stability. This is vital not only to industries and utilities, but also to schools and hospitals, and other generators of low-level radioactive waste.

The states have negotiated this compact in good faith, and it is now up to the Congress to approve the compact. In the compact, the states have imposed deadlines on themselves which are rapidly approaching. For this reason, it is especially important that Congress move expeditiously to approve the compact this year.

It is my privilege to add my endorsement to S. 1749 which is supported by the Governor of Virginia, the General Assembly, and my distinguished colleague, Senator Trible. The Southeastern Low-Level Radioactive Waste Management Compact will serve as a model for the entire country and is worthy of the strong and speedy approval of the Congress.

STATEMENT OF RICHARD W. RILEY, GOVERNOR, STATE OF SOUTH CAROLINA

Governor RILEY. Mr. Chairman, I am pleased to have this opportunity to come before you and the committee to testify on behalf of S. 1749.

Four years ago I testified before another committee of the Congress. At that time, I proposed that a national policy be established which would make each State responsible for insuring the safe disposal of its own low-level radioactive waste and which would allow States to carry out this responsibility on a regional basis.

As a result of your leadership in the Senate, Mr. Chairman—along with that of Representative Butler Derrick's in the House—this national policy was put in place when the Congress enacted the Low-Level Waste Policy Act of 1980.

With the passage of that law, South Carolina chose the regional option provided for in the act, and began to work with our neighboring States to develop the Southeast Compact which is now before Congress. This compact represents a solid framework for carrying out our individual State responsibilities in the Low-Level Waste Policy Act.

South Carolina has invested 2½ years in the regional effort. We have done it, because we believe that this is the proper, responsible course of action to take. As Governor, I am prepared to continue our active involvement in implementing this compact. But, in order to do this, we need, of course, the consent of Congress.

South Carolina shares one fundamental concern with all the other member States of the Southeast Compact. We all want a system of low-level waste management that will protect the health and safety of our citizens.

But South Carolina has one other fundamental concern which is unique among the Southeast Compact States. We want to insure that never again will we find ourselves in the position of being the Nation's dumping ground for low-level nuclear waste. Under the compacting option we have chosen, our State cannot achieve this objective unless Congress grants its consent to the Southeast Compact along with its exclusionary authority impact, as provided for in the 1980 law.

I urge you, Mr. Chairman, to work for an expeditious consent by the Senate to this compact, as well as for the other low-level waste compacts which have been presented to the Congress.

The States have shown that they can meet the challenge of handling low-level waste. I think a recent editorial in the Radioactive Exchange made this point: "When the Low-Level Waste Policy Act was enacted in 1980," it said, "it was generally held that the States would not succeed in establishing regional compacts and low-level waste disposal would, by default, be taken over by the Federal Government."

Now, only 2½ years later, 32 States have ratified one of the regional compacts, while 2 other States have made progress toward developing their own sites. As the editor of the Exchange noted: "Although this is only the first step * * *, it is a major breakthrough."

If Congress does not back up the national policy it established in the 1980 law, the momentum will be lost, and with it, the progress that has been achieved over the past 2½ years.

And if that happens, Mr. Chairman, South Carolina, as any other State, will have to find another way to meet its responsibilities while at the same time protecting its legitimate State interests.

Mr. Chairman, I look forward to working with you to secure congressional consent. I appreciate the leadership you have shown on this issue in the past. And I am confident that your continued efforts will play an important role in achieving what we believe is best for our State and for our region.

I will be happy to answer any questions, sir. If I might proceed to ask Senator Setzler and Representative Keyserling and Frank Caggiano to proceed with their statements, and we would all be available for questions.

The **Chairman**. Thank you. We will proceed that way. We will be glad to hear now from the other witnesses with you in the order you desire them to be heard.

Governor **Riley**. I would like to ask Nikki Setzler of Lexington County, who I said was negotiator of our compact and now serves on our commission along with Dr. Stucker.

The **Chairman**. Senator Setzler.

STATEMENT OF HON. NIKKI G. SETZLER, STATE SENATOR, STATE OF SOUTH CAROLINA

Mr. **Setzler**. Thank you, Mr. Chairman. I appreciate this opportunity to testify again before the Senate Judiciary Committee on this important subject.

Let me begin, Mr. Chairman, by reiterating a point I made in my testimony to the committee last March 2 in Washington. The Low-Level Waste Policy Act of 1980 mandates State responsibility for assuring the safe management and disposal of low-level waste and encourages regional efforts to carry out this responsibility. These provisions, plus the exclusionary authority authorized for compacts which receive the consent of Congress, are the key elements of a responsible and realistic national policy for low-level waste.

South Carolina has acted to meet its responsibilities under this national policy. We have done so by working with our neighboring States to develop a compact which includes all of the "key" elements I mentioned above.

At the same time, we have accomplished this task with due regard for the legitimate interests of the citizens of our State—a matter about which my colleagues in the South Carolina Senate feel very strongly.

We are now asking Congress to respond to our efforts by reaffirming the national policy you established 2½ years ago. This can be done by granting expeditious consent to the Southeast Compact and the other low-level waste compacts which are now before Congress.

Mr. Chairman, we are counting on your continued leadership on this issue to help our State and our region achieve the objectives for which we have worked so hard over the years.

Thank you, Mr. Chairman.

The **Chairman**. Thank you, Senator.

Governor **Riley**. Mr. Chairman, the next presenter is Representative Harriet Keyserling of Beaufort. She was also a negotiator that worked along with Senator Setzler for months in that effort. She now serves as alternative commissioner.

The CHAIRMAN. We're glad to have you, Representative Keyserling.

STATEMENT OF HON. HARRIET H. KEYSERLING, STATE REPRESENTATIVE, STATE OF SOUTH CAROLINA

Ms. KEYSERLING. I'm very glad to have this opportunity. I speak not only for myself but Speaker Schwartz, who asked me to speak for him as he couldn't come today.

I am speaking from the perspective of a legislator who sponsored the legislation, in all its versions, for the Southeastern Interstate Low-Level Radioactive Waste Management Compact.

The first version was written by the South Carolina Governor's staff and the other compact States. The second was the result of changes the South Carolina Legislature insisted upon, and was the starting point for the third and final version which was negotiated with the other compact States by the Governor's staff and four South Carolina legislators.

We, who negotiated, feel it is now not only a compact with the Southeastern States, but a compact with the legislature and the people of South Carolina, for we promised that in exchange for being the first host State, the State will be closed to all low-level waste from States outside the compact by 1986, and will be closed to all waste from outside the State by 1992.

Therefore, it is vital that Congress, which sets policy for regional compacts, help us make our compact work. It can work only if our compact with the legislature and the people of South Carolina is upheld in Congress in every detail, including the 1986 exclusionary date.

Thank you.

The CHAIRMAN. Senator Gressette couldn't be here. Mr. Caggiano, are you representing Senator Gressette?

STATEMENT OF FRANK CAGGIANO, REPRESENTING HON. L. MARION GRESSETTE, PRESIDENT PRO TEMPORE, STATE OF SOUTH CAROLINA

Mr. CAGGIANO. Yes, sir. He regrets he couldn't be here today, Senator.

Mr. Chairman, I appreciate the opportunity to be here today to offer a few brief comments on the legislation recently offered to ratify the Southeast Low-Level Radioactive Waste Compact. As you know, South Carolina and her several sister States that are parties to this compact have labored very hard to arrive at what we all consider is a solid, equitable and enforceable arrangement between the respective jurisdictions.

Our State has many interests at heart in seeing this process through to its successful completion. We have a responsibility to our neighbors, we have experience and leadership in this area to make available to other States and regions of the country, but most important we have the health, welfare, and safety of the citizens of South Carolina to protect.

Through the efforts of Senator Setzler and his colleagues in the general assembly who managed this legislation, we feel very strongly that

South Carolina and all participant States have forged a workable arrangement to manage one of the most critical of our Nation's environmental problems. I look forward to seeing the fruits of their work, and I would urge your timely consideration and passage of the legislation to ratify this compact.

In closing, I would state one qualification to my comments and praise. South Carolina will always act, through its general assembly and its compact commissioners, to maintain the health and safety of its citizens and insure equity in this compacting process. Should any party State, or other region, or for that matter, the Federal Government, take action to seriously disturb the current equilibrium, I feel certain that we will take the necessary and appropriate measures as would be in the best interest of South Carolina.

Again, thank you for the opportunity to appear and thank you for your sincere interest in this matter.

The CHAIRMAN. Thank you, Mr. Caggiano. Please express our regrets to Senator Gressette.

Governor RILEY. We would be happy to respond to questions.

The CHAIRMAN. Do you want some tough questions?

Governor RILEY. Moderately tough.

The CHAIRMAN. Governor Riley, the statute enacted into law by the South Carolina Legislature provides that South Carolina shall immediately withdraw from the compact if any member refuses to accept the designation as a host State, or if any member State is not acting in good faith. In complying with all of the terms of the compact, am I correct in assuming that these provisions are not a part of the compact itself?

Governor RILEY. Yes, sir. That is what we refer to as article 19, and all of the States that passed compact legislation had their own law that deals particularly with their situation.

South Carolina's is referred to as article 19. It's part of our act, but it is not part of the compact, and that is very clearly expressed within the confines of the act itself.

I might point out, Senator, that any withdrawal that we made under this provision would be within the purview of the compact itself. There is a certain notice to be given, a 4-year notice that has to be given, and other provisos that we would have to comply with; in other words, it in no way permits us to be outside the realm of the compact, but as Senator Gressette and others have pointed out, the health and safety feature, of course, we hold pure, because all States, of course, have their obligations to protect the health and safety of the people. In other words, it's a health and safety question.

We in South Carolina, just as any other State, would come in to do what is necessary to protect the people. Also, this refusing to accept the designation, the language that you referred to, is the second benchmark of three benchmarks that we had in the legislation. The first benchmark is that guidelines would be provided within 1 year, I think; the second is that a second host State or site would be determined; and third, that the second site would be operative by no later than the end of 1991; so this is one of the benchmarks that I think is very important and certainly to show us that as we move through the process that the compact participants intend to see to it that good faith is maintained between us and that the various benchmarks are met; and we are not to wait until the end of the process to determine if there is bad faith. We don't expect bad faith, obviously, and we certainly plan to give good faith ourselves.

The **Chairman.** I think you anticipated the second part of the first question, so we will go on to the next question. Governor Riley, article I of the compact states that implicit in congressional consent to this compact is the expectation by Congress and the party States that the appropriate Federal agencies will actively assist the compact commission and the individual States by certain activities. These include, among other things, expeditious enforcement of Federal laws and regulations and the provision of technical assistance of the compact.

Aside from being somewhat premature and perhaps inaccurate regarding what is implicit and congressional consent, does this provision obligate the Federal Government in any way to provide financial as well as technical assistance to the compact?

Governor **Riley.** No, sir. It does not. The language is very clear. It is my judgment, sir, that the compact itself is self-supporting, is paid through fees by the users of the regional facilities and that no Federal money is required.

The **Chairman.** Governor Riley, article V, section B of the compact states, in part, the following: "A host State may terminate or limit access to its regional facility if it determines that Congress has materially altered the condition of this compact."

What, in your opinion, would constitute a material alteration of the compact and what congressional changes are the party States most concerned about?

Governor **Riley.** Mr. Chairman, the general question was whether or not this, then, would give South Carolina some kind of special privilege. The answer to that is no, sir. It does not. I would like to ask Senator Setzler if he might address this issue. That was the point that he debated in the Senate. Senator, if you would, with the Senator's permission, respond.

The **Chairman.** Senator Setzler, you may proceed.

Mr. **Setzler.** Mr. Chairman, the section that you refer to in article V, section B was proposed by Senator Sanders of the South Carolina Senate who is now, of course, chief justice of our new court of appeals.

That language does not give South Carolina a special privilege; in fact, it is in the compact which has been passed by all eight States in the Southeast region, and I think what those eight States are saying through this provision in article V, section B, is that Congress, through the Low-Level Waste Policy Act of 1980, gave the States the responsibility of dealing with low-level waste and sets the guidelines by which they were to enter into these compacts. These eight States are saying, "We have done that; we have entered into the compact with good faith under the guidelines that you have set forth," but if, after the compact is formed, Congress changes the guidelines that were set forth in the Policy Act of 1980, then the host State, whichever State it may be, reserves the right to look at it again.

The **Chairman.** Would you be a little more specific about the types of changes you're concerned about?

Mr. **Setzler.** I think, Senator, the types of changes we would be concerned about, for example, would be changing the exclusionary dates, changing the size and number of States that we would have to accept into the compact, the types of waste that we would have to accept.

Governor RILEY. Senator, I point out that the word "materially" is part of that language, "materially altered the conditions of the compact," certainly we're not talking about minor technical-type changes, but something that would really materially change the compact itself.

The CHAIRMAN. Some change which would more or less go to the heart of the compact?

Governor RILEY. Yes, sir. Certainly the exclusionary date is part of that.

The CHAIRMAN. Governor Riley, a number of interested parties have raised the issue of what would happen in 1986 should congressionally approved compacts with disposal sites decide to exclude waste from regions which do not yet have sites on-line.

Do you believe this is an issue most appropriately resolved by Congress or by the States themselves?

Governor RILEY. Mr. Chairman, I respectfully submit that this issue should be addressed and handled by the States themselves; and I again would point out, as has been said, that 32 States have already passed through their legislatures, compacts, and I think that's a very significant number—I had the good fortune of explaining that to my fellow Governors in Portland, Maine recently—this is a measure that Congress gave to States, some power to see what we could do, and I think it's very clear and apparent that the States have responded and have responded well, 32 of them having gone through their house and senate and through all the committee procedures and passed legislation, I think, certainly shows the capacity and the intent of the States to deal forthrightly with this particular issue; so I would respectfully say that that issue, in my judgment, should be handled by the States.

The CHAIRMAN. I have a few more questions that, Governor, either you or those with you can answer as you see fit. Article I of the compact declares that each State is responsible for providing for disposal of low-level waste within its borders except for waste generated as a result of defense activities of the Federal Government or Federal research and development activities.

Article VIII of the compact states that nothing in the compact shall be construed to affect the generation, treatment, storage, or disposal waste generated by atomic energy defense activities or the Secretary of the U.S. Department of Energy or Federal research and development activities as defined in Public Law 96–573.

What do these provisions mean for disposal of federally generated waste at the Southeast regional site, and will the site continue to accept Federal waste which has heretofore been disposed of at commercial sites?

Governor RILEY. I would like to ask Representative Keyserling to respond to that.

Ms. KEYSERLING. Yes, sir, Mr. Chairman. It was our understanding that as long as the Federal agencies, which send the waste to the Barnwell facility, continued to abide by all the rules and regulations in the provision of the compact they would continue to do so. They would also be under the exclusionary dates so that in 1986 they would then go to the waste site within their region, to the compact site within the regions in which they produce the waste.

The **Chairman**. What types and volume of federally generated waste is currently disposed of at the Barnwell site, and what type and volume of Federal waste is generated within the Southeast region?

Governor **Riley**. I would like to ask Senator Setzler to give information on that.

Mr. **Setzler**. Mr. Chairman, we have present Heyward Shealy, Director of Radiation Control, that provides a data sheet that gives all that information, but at this time, approximately 130,000 cubic feet of waste comes from the Southeast Compact States from January 1982 to July 1983. He will give you a full detailed data sheet.

The **Chairman**. We will require that to be put into the record. Do you just want to put the statement in the record or do you wish to elaborate on it?

Mr. **Setzler**. We would just want it in the record.

[Data sheets follow:]

CHEM-NUCLEAR SYSTEMS, INC., BARNWELL, S.C.
FEDERAL SHIPMENTS DISPOSED OF DURING JANUARY, 1982 THROUGH JULY, 1983

/ of 7

CUSTOMER /	DATE	WASTE DESCRIPTION	STATE	ACTIVITY MILLICURIES	Cu. Ft. VOLUME	TYPE OF MATERIAL	
~~UNC Naval/Products~~	~~05-83~~	~~Solidified liquids in~~ cement & solid waste	~~CT~~	~~5.55~~	~~506.50~~	~~LSA~~	
"	06-83	Solid Waste	CT	6.89	512.00	LSA	
"	07-83	Dewatered mechanical filters & solidified ~~liquids in cement~~	CT	11.22 54.60	270.00	LSA	UNC Naval Products Volume = 7,906.20
US Marine Corp. Albany, Ga.	05-82	Solid Waste	GA	76.94	85.80	Luminous Dials	
US Navy Minneapollis, MN	12-82	Solid Waste	MN	5,011.00	40.00	Source	
US Naval Reserve Washington, D.C.	04-82	Solidified liquids in cement & solid waste	DC	49,000.00	.93	Metal Test Specimens	
Tennessee Valley Authority-Browns Ferry Plant-shipped 325 shipments during this period	01-82 thru 07-83	Dewatered filter media, dewatered resins & solid waste	AL	* 10,539,894.95	* 88,987.21	LSA	
Tennessee Valley Authority-Sequoyah Plant shipped 27 Shipments during this period	01-82 thru 07-83	Dewatered filter media, solid waste, & dewatered resins.	TN	* 1,431,351.54	* 10,748.50	LSA	
* = Shipment Totals							
GRAND TOTALS				12,123,343.22	137,578.15		
			UNC Naval	− 54.60	− 7,906.20		
				12,123,288.62	129,671.95		

CHEM-NUCLEAR SYSTEMS, INC., BARNWELL, S.C.
FEDERAL SHIPMENTS DISPOSED OF DURING JANUARY, 1982 THROUGH JULY, 1983

CUSTOMER	DATE	WASTE DESCRIPTION	STATE	ACTIVITY MILLICURIES	Cu. Ft. VOLUME	TYPE OF MATERIAL
Charleston Naval Shipyard	03-82	Solid Waste	SC	.26	570.30	LSA
"	06-82	Solidified Liquids in cement & solid waste.	SC	35.83	505.90	LSA
"	06-82	Solid Waste & Resins in cement.	SC	2,274.88	125.00	LSA
"	06-82	Solid Waste & Filter media in cement.	SC	1,743.00	36.50	LSA
"	07-82	Solid Waste	SC	10.99	480.00	LSA
"	08-82	Solid waste, resins in cement, & solidified liquids in cement.	SC	100.51	450.50	LSA
"	08-82	Resins in cement & dewatered filter media.	SC	5,749.98	36.50	LSA
"	09-82	Resins in cement	SC	85.65	495.50	LSA
"	11-82	Resins in cement	SC	1,419.42	350.15	LSA
"	12-82	Resins in cement,solid waste, & solidified liquids in cement.	SC	35.64	498.40	LSA
"	01-83	Filter media in cement and resins in cement.	SC	1,117.66	24.85	LSA
"	02-83	Solid waste & resins in cement.	SC	2,888.05	125.00	LSA
"	03-83	Resins in cement and filter media in cement	SC	965.91	34.95	LSA
"	04-83	Resins in cement	SC	2,353.77	34.95	LSA
"	05-83	Solid waste	SC	45.40	830.00	LSA
"	05-83	Resins in cement, solidified liquids in cement & solid waste	SC	39.68	538.80	LSA

CHEM-NUCLEAR SYSTEMS, INC., BARNWELL, S.C.
FEDERAL SHIPMENTS DISPOSED OF DURING JANUARY, 1982 THROUGH JULY, 1983

CUSTOMER	DATE	WASTE DESCRIPTION	STATE	ACTIVITY MILLICURIES	Cu. Ft. VOLUME	TYPE OF MATERIAL
Charleston Naval Shipyard	06-83	Solid Waste	SC	77.80	611.70	LSA
"	06-83	Resins in cement	SC	976.17	35.10	LSA
"	06-83	Solidified liquids in cement & Filter media in cement.	SC	128.80	541.00	LSA
"	06-83	Resins in cement & Filter media in cement	SC	3,429.31	23.40	LSA
"	07-83	Resins in cement & Filter media in cement.	SC	2,351.05	35.10	LSA Charleston Naval Shipyard Volume = 6,383.6
Newport News Ship-Building	01-82	Resins in cement	VA	1,560.20	110.00	LSA
"	01-82	Solidified resins	VA	74.18	750.00	LSA
"	02-82	Solid Waste	VA	13.72	215.00	LSA
"	03-82	Solid Waste	VA	107.35	465.00	LSA
"	04-82	Dewatered resins & solid waste	VA	91.18	465.00	LSA
"	05-82	Dewatered resins, Dewatered filter media, and solid waste	VA	32.23	600.00	LSA
"	05-82	Solid Waste	VA	84.65	545.70	LSA
"	06-82	Solid Waste	VA	93.90	472.50	LSA
"	08-82	Dewatered Filter media, Dewatered resins, & solid waste.	VA	158.68	895.00	LSA
"	09-82	Solid waste	VA	20.07	165.00	LSA
"	11-82	Solid waste	VA	91.67	595.70	LSA
"	01-83	Solid waste	VA	72.13	360.00	LSA

CHEM-NUCLEAR SYSTEMS, INC., BARNWELL, S.C.
FEDERAL SHIPMENTS DISPOSED OF DURING JANUARY, 1982 THROUGH JULY, 1983

CUSTOMER	DATE	WASTE DESCRIPTION	STATE	ACTIVITY MILLICURIES	Cu. Ft. VOLUME	TYPE OF MATERIAL	
Newport News Ship-Building	01-83	Filter media in cement Resins in cement, & solid waste.	VA	1,762.97	110.00	LSA	
"	04-83	Dewatered mechanical filters, solid waste & resins in cement.	VA	1,324.78	110.00	LSA	
"	04-83	Dewatered filter media Del. Cus. Media, solid waste, & air filteration filters.	VA	222.99	695.40	LSA	
"	06-83	Dewatered resins	VA	191.74	745.50	LSA	Newport News Ship-Building Volume= 7,299.8
Norfolk Naval Ship-Yard	05-82	Solidified liquids in cement & solid waste	VA	104.00	1,665.00	LSA	
"	07-82	Solid waste	VA	20.62	582.40	LSA	
"	09-82	Solidified liquids in cement & solid waste.	VA	17.41	333.00	LSA	
"	12-82	Resins in cement & solid waste	VA	62.55	285.00	LSA	
"	12-82	Solid waste	VA	12.84	422.50	LSA	
"	03-83	Solid waste	VA	33.36	472.50	LSA	
"	05-83	Solid waste	VA	80.78	473.00	LSA	Norfolk Naval Ship-Yard Volume = 4,233.40
Portsmouth Naval	05-82	Resins in cement & solid waste	VA	176.52	698.40	LSA	
"	10-82	Solidified liquids in cement, resins in cement & solid waste	VA	75.50	501.40	LSA	
"	12-82	Resins in cement & solid waste	VA	21.82	110.00	LSA	
"	05-83	Solidified liquids in cement, resins in cement & solid waste.	VA	101.68	761.80	LSA	

CHEM-NUCLEAR SYSTEMS, INC., BARNWELL, S.C.
FEDERAL SHIPMENTS DISPOSED OF DURING JANUARY, 1982 THROUGH JULY, 1983

CUSTOMER	DATE	WASTE DESCRIPTION	STATE	ACTIVITY MILLICURIES	Cu. Ft. VOLUME	TYPE OF MATERIAL
Portsmouth Naval	12-82	Solidified liquids in cement, filters in cement, resins in cement & solid waste.	VA	76.18	379.10	LSA Portsmouth Naval Volume = 2,450.70
US ARMY-Aberdeen Proving Ground	01-82	Solid Waste	MD	2.06	394.80	LSA
"	02-82	Solid Waste	MD	1.30	363.30	LSA
"	04-82	Solid Waste	MD	1.71	394.80	LSA
"	06-82	Solid Waste	MD	4.38	521.90	LSA
"	07-82	Air Filteration Filters.	MD	2.08	394.80	LSA
"	08-82	Solid Waste and air filteration filters.	MD	4.54	375.20	LSA
"	09-82	Air Filteration filters.	MD	.76	359.80	LSA
"	10-82	Air Filteration filters.	MD	1.03	357.00	LSA
"	11-82	Solid Waste and Air Filteration Filters.	MD	.64	357.00	LSA
"	12-82	Solid Waste	MD	1.94	357.00	LSA
"	01-83	Air Filteration Filters	MD	.77	357.00	LSA
"	02-83	Solid Waste	MD	4.82	357.00	LSA
"	03-83	Air Filteration Filters	MD	6.27	357.00	LSA
"	04-83	Solid Waste	MD	1,959.40	239.40	LSA
"	05-83	Solid Waste	MD	2,155.50	257.60	LSA
"	05-83	Solid Waste	MD	1,893.80	294.90	LSA
"	06-83	Solid Waste	MD	2,155.60	257.60	LSA

CHEM-NUCLEAR SYSTEMS, INC., BARNWELL, S.C.
FEDERAL SHIPMENTS DISPOSED OF DURING JANUARY, 1982 THROUGH JULY, 1983

CUSTOMER	DATE	WASTE DESCRIPTION	STATE	ACTIVITY MILLICURIES	Cu. Ft. VOLUME	TYPE OF MATERIAL
US ARMY-Aberdeen Proving Ground	06-83	Solid Waste	MD	.75	266.40	LSA
"	07-83	Solid Waste	MD	2,024.60	257.81	LSA
"	07-83	Solid Waste	MD	.80	256.00	LSA
"	04-83	Solid Waste	MD	591.20	225.00	LSA
US ARMY-Research Center-Watertown,	05-82	Solid Waste	MA	1,127.05	390.00	LSA
US ARMY-SC Nat'l Guard	11-82	Components	SC	5.38	60.50	Devices
US AIR FORCE - Eglin AFB	01-82	Solid Waste	FL	.06	262.80	Devices (scrap metal)
"	05-83	Solid Waste	FL	1,631.00	268.20	Devices
US Air Force - Hanscom AFB	03-83	Solid Waste	MA	769.10	30.00	Compacted Trash
US Air Force - Holloman AFB	01-82	Solid Waste	NM	.10	4.00	Instruments & Gauges
US Air Force - Kelly AFB	03-82	Solid Waste	TX	7.14	200.00	Electron Tubes
"	06-82	Solid Waste	TX	35,756.59	160.00	Compasses & Gear Boxes
"	10-82	Dow media in solidified liquids	TX	3,892.27	101.50	LSA
"	03-83	Solid Waste	TX	11,315.20	227.00	Devices (Compasses)
US Air Force - McClellan AFB	08-82	Solid Waste	CA	.00	225.00	LSA
"	09-82	Solid Waste	CA	.00	236.50	LSA
"	10-82	Solid Waste	CA	.00	226.50	LSA

6 of 7

CHEM-NUCLEAR SYSTEMS, INC., BARNWELL, S.C.
FEDERAL SHIPMENTS DISPOSED OF DURING JANUARY, 1982 THROUGH JULY, 1983

CUSTOMER	DATE	WASTE DESCRIPTION	STATE	ACTIVITY MILLICURIES	Cu. Ft. VOLUME	TYPE OF MATERIAL
AIR Force - Arnold Air Force Base	01-82	Solid Waste	TN	.10	1.50	Gauges
"	07-82	Solid Waste	TN	1.36	2.40	Smoke Detectors
Air Force -Shaw AFB	04-82	Solid Waste	SC	23.11	4.00	LSA
Air Force - Tinker AFB	04-82	Solid Waste	OK	1.26	24.00	Devices & Gauges
USAF - Hospital	05-82	Solid Waste	SC	50.50	16.80	Compacted Trash
~~UNC Naval Products~~	~~02-82~~	~~Solid Waste~~	~~CT~~	~~9.70~~	~~1,103.00~~	~~Compacted Trash~~
"	03-82	Solid Waste	CT	5.58	668.00	"
"	04-82	Solidified Liquids in cement & solid waste	CT	7.98	315.00	"
"	06-82	Solid Waste	CT	7.48	510.00	"
"	07-82	Solid Waste	CT	6.12	510.00	LSA
"	08-82	Solid Waste	CT	6.50	487.50	Limited Quantity
"	09-82	Solid Waste	CT	1.73	513.00	LSA
"	10-82	Solidified liquids in cement & solid waste	CT	6.12	510.00	LSA
"	11-82	Dewatered mechanical Filters & solid waste in cement	CT	4.38	512.20	LSA
"	12-82	Dewatered mechanical filters & solid waste	CT	7.90	510.00	LSA
"	02-83	Solid Waste	CT	2.56	469.00	LSA
"	04-83	Dewatered mechanical filters & solid waste	CT	9.45	510.00	LSA

Defense Contractor

not a federal shipper

The CHAIRMAN. Realizing that article VI contains language to clarify that the compact does not abrogate or limit the applicability of any act of Congress or jurisdiction of any Federal agency, do you view any of the provisions of the compact as altering in any way the current balance of Federal and State regulatory authority in the area of low-level waste transportation and disposal?

Governor RILEY. The answer is no, Mr. Chairman. Do either one of you want to elaborate (indicating Mr. Setzler, Ms. Keyserling, and Mr. Caggiano)?

Mr. SETZLER. Mr. Chairman, I don't think there was any intent to alter the existing regulatory system. I think it was the intent to clarify between the States what their relationship of their State laws would have with each other.

The CHAIRMAN. Must State regulations and standards promulgated by member States of the compact continue to be compatible with Federal regulatory standards?

Governor RILEY. Yes, sir. They would. Do either one of you want to elaborate (indicating Mr. Setzler, Ms. Keyserling, and Mr. Caggiano)?

Ms. KEYSERLING. As far as our interpretation was, yes.

The CHAIRMAN. If Congress were to condition its consent to the compact, do you believe it would be necessary for the States to reratify the compact?

Governor RILEY. I don't think to our knowledge, Mr. Chairman, as we understand it a State must simply determine whether it's willing to participate in the compact given whatever conditions Congress may have placed in the consent legislation to it.

The CHAIRMAN. If Congress put certain conditions on the compact, do you think it would be necessary for the States to reratify the compact?

Governor RILEY. I think that could require it. Otherwise, if Congress simply accepted them, then we do not think that that is necessary, but if they did put conditions that would change it, that it would cause the States to have to go back into it, yes, sir.

The CHAIRMAN. Do you think that would apply to any type of condition that the Congress might put on the compact?

Mr. SETZLER. Mr. Chairman, to clarify that, I think what it amounts to, if Congress adds conditions to it, I don't think it would necessarily require reratification by the South Carolina General Assembly, however, I do think that they would take the matter up along with the Governor and make a determination and give instructions to their two commissioners whether or not to participate in the compact, and I think that the State would have to make a decision based on the conditions set by Congress whether or not they intend to participate in the compact any further at that point, without necessarily reratification.

The CHAIRMAN. At the beginning of the hearing, I should have introduced the Chief Counsel of the Judiciary Committee of the U.S. Senate, Mr. Lide, sitting to my left, and to my right, Miss Sally Rogers, who is an antitrust lawyer and also an expert on nuclear matters. She's given a lot of attention to these questions and is recognized in Washington as one of the leading authorities on this subject. We're very pleased to have them with us today.

Is there anything else, Governor, that you or those with you would care to say to the committee?

Governor **Riley**. Mr. Chairman, I think not. Certainly we appreciate very much the opportunity of appearing before you, especially afforded us here in South Carolina and in the Senate Chamber that you're very familiar with, but we especially appreciate you giving us the opportunity to testify before you in this forum. I speak, I'm sure, for my colleagues.

The **Chairman**. It's a pleasure to have you with us, Governor, and to have Senator Setzler, Representative Keyserling, and Mr. Caggiano with us again. Mr. Ceggiano, you express our best wishes to Senator Gressette.

Our next witness is Dr. Richard S. Hodes. Dr. Hodes is chairman of the Southeast Interstate Low-Level Radioactive Waste Management Commission, Atlanta, Ga. With him, I believe, is Capt. William Briner a professor at Duke University and a member of the commission from North Carolina. Dr. Hodes, you may proceed.

STATEMENT OF DR. RICHARD S. HODES, CHAIRMAN, SOUTHEAST INTERSTATE LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT COMMISSION, ATLANTA, GA.

Dr. **Hodes**. As chairman of the Southeast Interstate Low-Level Radioactive Waste Management Commission, I am pleased to present testimony on behalf of all of the member States of the Southeast Compact. I am accompanied today by my colleague on the commission, Capt. William H. Briner of North Carolina. Dr. Briner is secretary-treasurer of the commission.

Let me say at the outset how much we appreciate the way in which you and Congressman Derrick responded to the commission's consent legislation in the Congress. Your actions are wholly consistent with the leadership you have shown on this issue over the years.

As you know, eight States have been involved in the process of negotiating and enacting the compact over a 2½ year period. At present, the States of Alabama, Florida, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia have ratified the Southeast compact. The Georgia Legislature ratified an earlier version in 1982 and is expected to enact amendments during the next session. Their organizational language was a little bit inconsistent, and they're going to reenact that legislation this year, we trust.

These eight States have worked together in good faith to resolve their low-level radioactive waste disposal problems on a regional basis, and they intend to continue the efforts necessary to insure the success of the Southeast Compact.

The Southeast Low-Level Waste Commission was formed in accordance with article VII, section (D) (1) of the compact, which states that:

> The first three States eligible to become party States to this compact which enact this compact into law and appropriate the fees required in article IV, section (H) (1), shall immediately, upon appointment of their commission members, constitute themselves as the Southeast Low-Level Radioactive Waste Management Commission, shall cause legislation to be introduced in Congress which grants the consent of Congress to this compact; and shall do those things necessary to organize the commission and implement the provisions of this compact.

This requirement was fulfilled on July 21, 1983, at which time the commission elected officers, approved a draft congressional consent bill for the Southeast Compact, and organized two working committees to initiate the next steps for commission action. Each member State has a representative on at least one committee. A commission roster and a committee list are attached to this written testimony.

One committee will meet this Friday to develop a proposed work plan and a staffing and budget plan for the commission. The committee will formulate procedures for implementing the language of article IV of the compact which requires the commission to identify the regional facilities necessary for the management of low-level wastes; to prepare a regional plan for the development of these facilities; to develop criteria for the identification of host States; and to identify a host State for a new disposal site within the Southeast compact region.

A second committee will meet early this month to develop proposed by-laws for the commission. The recommendations of these two committees will be presented to the commission for its review and approval at its next meeting on September 20.

As you can see, Mr. Chairman, we are preparing the framework for implementation of the compact in anticipation of congressional consent. However, the commission's authority to act will remain somewhat limited until the Southeast Compact receives congressional consent. As we have in the past, we will continue to work closely with you, the members of the committee, as well as our own congressional delegations to achieve this objective.

Two commissioners, Senator Joseph V. Gartlan, Jr., of Virginia and Dr. John J. Stucker of South Carolina, have been appointed to work with congressional staff on the consent process. Let me also add that we are very grateful for the advice and assistance that your staff has given to the commission as we have prepared for this consent process.

The eight States involved in the Southeast Compact have accepted the responsibility for low-level waste management that was set forth in the Low-Level Radioactive Waste Policy Act of 1980. We have worked diligently to reach this critical stage of congressional consideration and we believe that the Southeast Compact fulfills the intent of Congress established in the 1980 act. We now urge you to seek expeditious consent for this compact. The successful implementation of our compact, as well as the others before the Congress, depends on the timeliness with which they are approved by the Congress.

We want to thank you for your commitment to this regional compacting process and for the opportunity to present this testimony today. I would be happy to answer any questions or refer those to Captain Briner. Thank you, Mr. Chairman.

The Chairman. Thank you, Dr. Hodes. Could you briefly describe the resolutions which the Southeast commission has passed to date?

Dr. Hodes. Yes. The commission, to date, has passed the resolution, which would provide for the formation of a low-level radioactive waste disposal commission consisting of 16 members, 2 representing each of the 8 member States in the Southeast and those States have been listed.

The commission would have the responsibility for the transportation of the disposal of hazardous waste in the region under the definitions provided by the commission.

Additionally, the commission would elect officers who would then become the officers of the commission and establish for itself appropriate staff, would provide the appropriate fees to be charged to suppliers of disposable waste in order to operate and manage the commission.

Additionally, the commission compact provides for the exclusion from the region by January 1, 1986, a waste from outside of the region unless there are provisions made to do otherwise.

It also provides that by January 1, 1992, that the existing site in the region in Barnwell County, S.C. will be closed and another region will have—another State will have been sited as a host State and a region or area within that State identified as a disposal site.

The compact also provides that the disposal site will be under the management and control of the host State and that fees would be provided as set by the host State that would be adequate to provide for the management of the disposal site with additional fees with whatever administrative costs would have to be undertaken by the commission in carrying out the assigned duties.

The CHAIRMAN. What actions do you feel are appropriate for the commission to take prior to congressional consent and what actions might be more properly delayed until congressional consent has been given?

Dr. HODES. Clearly I think that the commission should at the moment establish and demonstrate to the Congress its capacity to perform its job. That would be one in which it would organize itself, elect its officers. That has been done.

Second, it should set forth a work schedule establishing criteria for the selection of a host State and establish a set of by-laws which would be acceptable to the commission. That, as I have indicated in my initial testimony, will be carried out this month, and we feel that within the next 60 days those actions will have been taken and completed. At that point, the commission's hands are relatively tied until we receive congressional consent. Then we can proceed with the process of host State identification and site identification and various types of fee determinations made.

The CHAIRMAN. Dr. Hodes, has the commission undertaken any analysis or study of what activities are appropriate prior to Congress consent to the compact?

Dr. Hodes. Yes, sir. The commission did do that and the activities that were appropriate were basically in administrative and organizing that we have taken, and we do not feel we should take any actions towards specifically identifying host States or host sites until such time as we have congressional action. I also refer that question to Dr. Briner.

The CHAIRMAN. Dr. Briner, we will be glad to hear from you.

STATEMENT OF CAPT. WILLIAM H. BRINER, SECRETARY/TREASURER, SOUTHEAST INTERSTATE LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT COMMISSION, ATLANTA, GA.

Dr. BRINER. I don't think I can add anything to what Dr. Hodes has said. What the Southeast Compact Commission has done thus far is simply to constitute itself in an administrative manner. We have not taken any steps of an other than organizational nature at this time.

The **Chairman**. Dr. Hodes, do you view any of the provisions of the Southeast Compact as being effective prior to congressional consent? If so, which provisions?

Dr. **Hodes**. No provisions of the compact become effective, Senator, other than the organizational aspects and the development of the administrative capacity.

We have established a, if you will, entry fee to the compact and the member States have all submitted that entry fee so that there are limited amounts of funds available for organizational activity, and selection of very limited staff activity. Beyond that, the commission can carry out no other activity until congressional consent.

The **Chairman**. I would like to return a moment to an issue which I raised earlier to Senator Setzler and Representative Keyserling, that of disposal of Federal low-level waste. What, in your opinion, do the provisions of the compact mean with regard to the disposal of Federal waste at a southeastern regional facility?

Dr. **Hodes**. As I understand the language and as I interpret it, Senator, the language of the compact would suggest that Federal waste which is generated within the region would be accepted by the compact, by the commission. Federal waste generated outside the region should properly be disposed of in those areas wherein such other compacts or other States that might wish to establish their own disposal sites would be located, so that any Federal waste generated within the southeast region and any of the eight compacting States would then be appropriately transferred to the disposal site that's been established by the commission.

The **Chairman**. Dr. Hodes, as various compacts have been submitted to Congress for its consent, there has been discussion regarding what would happen in 1986 if the exclusionary authority given to the compacts goes into effect before new sites come on line. Do you view this issue as one which should be addressed by Congress or one which is more appropriately resolved by the States themselves?

Dr. **Hodes**. Senator, because of the landmark approach toward State decisionmaking in this process, I think it would be exemplary that the States themselves could make the arrangements to handle those problems and I do believe there is sufficient flexibility in the compact language, established in those languages compacted in other regions, and I don't know what precisely, that these regions could make arrangements among themselves for additional waste disposal after 1986 if, in fact, other sites aren't on line and certain arrangements and contracts could be made with other compacting States and, in fact, other independent States until such time as they can bring their sites on line. In that event, I'm sure there would be some dates certainly that would be established in each specific situation. I think all of that could be done and those arrangements made and avoid the necessity of Congress having to impose its own action on the existing compact language regarding exclusionary dates. That would avoid any further examination by the individual legislative authorities which would complicate the issue considerably.

The **Chairman**. Dr. Hodes, article III of the compact requires each Party State to establish the capability to impose Federal and State laws and regulations and the capability to license and regulate disposal facilities within its borders. Am I correct in assuming that these provisions, in effect, require a party State to become an Agreement

State pursuant to section 274 of the Atomic Energy Act of 1954? Are all Party States to the compact currently Agreement States?

Dr. **Hodes.** All Party States, as far as I know, are Agreement States except for the State of Virginia. Virginia, Captain Briner advises me, is not an Agreement State.

Dr. **Briner.** That's correct, Senator. Virginia is not an Agreement State. It's an NRC regulated State. In the negotiating sessions that surrounded the Southeast Compact agreement, this was a frequently discussed matter. I do not read that particular section as requiring that a State become an Agreement State in order to become a member of the compact. When it did come up in the discussions surrounding the Southeast Compact formation, Virginia indicated a willingness to look at it; in other words, consider becoming an Agreement State if that were absolutely required, but it is not my reading of the regulation or the compact that would require that, sir.

The **Chairman.** Article III of the compact further directs that each Party State must, to the extent authorized by Federal law, require generators within its borders to use the best available technologies and practices to minimize waste volume.

What does this requirement mean in practical terms, the generators of low-level waste? Also, to what extent is such a requirement authorized by Federal law?

Dr. **Briner.** I think the best available technology is a frequently used term today. I believe what the Southeast Compact had in mind was the concept that both risk benefit and cost benefit must be applied to this situation; in other words, you can hire five Rolls Royce automobiles to carry your low-level waste to a site if it can be shown that they are a very heavy car and not apt to become involved in a serious accident affecting people. That would be somewhat ludicrous, a ludicrous way to pursue the matter, because on a cost benefit versus risk benefit analysis of the transportation of low-level waste, it simply would not hold water. I think what we're really saying is it would be somewhere between those two. The results of those two analyses, a cost and risk benefit analysis, regarding which is the best reasonable technology to use rather than the best available.

The **Chairman.** Article II of the compact contains a relatively broad definition of the term "facility"—basically including those utilized for treatment and storage as well as disposal of low-level waste. Why was this particular definition utilized and what sort of facilities do you envision being established within the Southeast region?

Dr. **Briner.** That terminology was used, Mr. Chairman, because the Southeast Compact believes very strongly of the concept of low-level waste management. I think we get too much wound up on a wheel sometimes and we think on low-level waste simply as a burial function requiring a burial function. There are alternative technologies that are available today that some of that waste can more properly be disposed of using some of these technologies such as incineration.

The Nuclear Regulatory Commission, for example, a couple of years ago, made it possible to incinerate certain carbon, or tritium, or hydrogen-3 containing waste as a disposal method.

Now the contemplation of those are very, very small, but it is a disposal method in that regard. It can be a volume reduction function as well; in other words, instead of burying 100 cubic feet with low-level waste with a volume reduction factor of at least 50 in the incineration process, you can bring that down to 1 to 2 cubic feet in the ground.

There is another component of waste that may very well be temporarily stored, for decay, allowed to decay away to nothingness, don't occupy landfills, don't incinerate, don't do anything. Just hold it for decay. That is particularly true for nuclear medicine waste, that's what we were speaking of, sir, or to.

The CHAIRMAN. Another definition which requires some clarification is that of "generator." Does this definition exclude Federal generators of low-level waste; and if so, why? Does it include transporters of low-level waste generated within the region?

Dr. BRINER. If I may have a moment, Senator, to refer to how we define a generator in order to answer.

Mr. Chairman, the definition of generator as it appears in article II is that just as our friends from South Carolina indicated it would be with regard to Federal waste, that Federal waste which is being currently accepted at the Barnwell site and which meets all other criterias specified within the compact, would not be barred from any Southeast compact facility.

In addition, Mr. Chairman, the term "generator" in our compact document does not include persons who provide a service to generators by arranging for complex transportation, storage, or disposal of waste with respect to such waste generated outside the region.

The CHAIRMAN. Dr. Hodes and Dr. Briner, I want to thank you both for your appearance here and the testimony which you have given. Is there anything else that you would like to add?

Dr. BRINER. All I would like to add, is to reemphasize our commitment to proceeding with this project and also that congressional action coming as expeditiously as possible would make the entire concept much more effective and work well, and I know all of us are enthusiastic about the compacting procedures and seeing this go forward, and we thank you again and Congressman Derrick for your interest and cooperation in moving this project forward.

[List of commission members follows:]

SOUTHEAST INTERSTATE LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT COMMISSION

2300 Peachford Road
One Exchange Place, Suite 1230
Atlanta, Georgia 30338

COMMITTEES

Work Plan/Staffing/Budget

William H. Briner, Chairman
Nikki G. Setzler
Timothy J. Sullivan
George H. Meier
John I. Paulk

By-Laws

Jack Cozort, Chairman
Fred O. Braswell, III
Robert H. Wolle
Aubrey V. Godwin

Congressional Consent Activities

Joseph V. Gartlan, Jr.
John J. Stucker

SOUTHEAST INTERSTATE LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT COMMISSION

2300 Peachford Road
One Exchange Place, Suite 1230
Atlanta, Georgia 30338

ROSTER

Chairman..........................Dr. Richard S. Hodes, Florida
Secretary/Treasurer..............Capt. William H. Briner, North Carolina

Commissioner	Alternate
ALABAMA	
Aubrey V. Godwin Director, Bureau of Radiological Health Alabama Department of Public Health Montgomery, 36130-1701 (205) 832-5990 Office (205) 272-6540 Home	Cameron McDonald, Ph.D. Consultant #403, 1200 Beacon Parkway East Birmingham, 35209 (205) 832-5010 Office (205) 871-4665 Home
Fred O. Braswell, III Director, Energy Division Department of Economic and Community Affairs 25 Washington Avenue Montgomery 36130 (205) 832-5010 Office (205) 262-2310 Home	
FLORIDA	
Richard S. Hodes, M.D. 238 East Davis Boulevard Tampa, 33606 (813) 974-3720 Office (813) 251-3040 Home	George H. Meier Staff Director Select Committee on Growth Management 220 House Office Building Tallahassee, 32301 (904) 488-9055 Office
David H. Pingree Secretary, Department of Health & Rehabilitative Services 1317 Winewood Boulevard Tallahassee, 32301 (904) 488-7721 Office	James T. Howell, M.D., M.P.H. Deputy Secretary, Department of Health & Rehabilitative Services 1317 Winewood Boulevard Tallahassee, 32301 (904) 488-7721 Office

Commissioner	Alternate
GEORGIA	
James L. Setser (Negotiator) Chief, Program Coordination Branch Department of Natural Resources 270 Washington Street, SW Room 825 Atlanta, 30334 (404) 656-6905 Office (404) 427-5479 Home	
MISSISSIPPI	
Honorable William F. Winter Governor of Mississippi State Capitol Jackson, 39205 (601) 354-7575 Office	Wilbur G. Ball Executive Director Mississippi Department of Energy & Transportation 510 George Street Jackson, 39202 (601) 961-4733 Office (601) 924-7258 Home
John I. Paulk, Ph.D., P.E. Associate Dean & Director of Engineering & Industrial Research Station Mississippi State University P.O. Drawer DE Mississippi State, 39762 (601) 325-2266 Office	Eddie S. Fuente Director, Division of Radiological Health State Board of Health P. O. Box 1700 Jackson, 39205 (601) 354-6657 Office
NORTH CAROLINA	
Honorable George W. Miller, Jr. State Representative 200 Wachovia Bank Building Durham, 27702 (919) 682-5747 Office	Jack Cozort Legal Counsel to the Governor Administration Building Raleigh, 27611 (919) 733-2417 Office
Captain William H. Briner, USPHS (RET.) Associate Professor of Radiology Box 3304, Duke University Medical Center Durham, 27710 (919) 684-5636 Office (919) 489-8292 Home	James E. Watson, Jr., Ph.D. Director, Radiological Hygiene Program Area Department of Environmental Science and Engineering University of North Carolina Chapel Hill, 27514 (919) 966-1171 Office

Commissioner	Alternate
SOUTH CAROLINA	
John J. Stucker, Ph.D. Special Assistant to the Governor P.O. Box 11450 Columbia, 29211 (803) 758-3208 Office (803) 765-0786 Home	Honorable Harriet H. Keyserling State Representative P.O. Box 1108 Beaufort, 29902 (803) 524-5944
Honorable Nikki G. Setzler State Senator P.O. Box 1036 West Columbia, 29171 (803) 796-1285 or 758-5754 Office (803) 796-7573 Home	
TENNESSEE	
Robert H. Wolle Environmental Consultant to the Commissioner Tennessee Department of Health & Environment Terra Building Nashville, 37203 (615) 741-3657 Office (615) 373-0755 Home	
William Koch, Jr. Counsel to the Governor Office of the Governor State Capitol Nashville, 37219 (615) 741-2001 Office	
VIRGINIA	
Honorable Joseph V. Gartlan, Jr. State Senator 1801 K Street, NW Washington, DC 20006 (202) 822-5358 Office (703) 960-3044 Home	

Commissioner	Alternate

VIRGINIA (cont'd)

Timothy J. Sullivan
Executive Assistant for Policy
Office of the Governor
State Capitol
Richmond, 23219
(804) 786-2211 Office
(804) 220-0423 Home

The CHAIRMAN. Thank you very much. When I was introducing Mr. Lide and Miss Rogers, I overlooked Dr. Tennant seated behind me. Dr. Tennant is an expert on nuclear energy, and we're very pleased to have him here. He is on our staff by special assignment. Mr. John Steer is on our Judiciary Committee staff in Washington, and Mr. Jim Babb is on my staff in Columbia part time.

Our next panel consists of Michael Lowe, director of the Palmetto Alliance, Inc., Columbia, S.C.; Evelyn J. Bush, a citizen of South Carolina; Dr. Mary Kelly, executive vice president of the League of Women Voters of South Carolina. Please come around and introduce yourselves. Mr. Lowe, we will hear from you first. Is there another witness here?

Mrs. THOMAS. Senator Thurmond, my name is Ruth Thomas, and I contacted your office to ask to be a speaker, but it's not included, and the organization that I'm representing did work on the compact and also the proposed amendment, so I would like to present a brief statement. I complied with your request, Senator Thurmond, to have a copy taken to your office in Columbia.

The CHAIRMAN. We were under the impression you just wanted your statement placed in the record. Did you want to say something this morning?

Mrs. THOMAS. Yes, I did.

The CHAIRMAN. If we have time. We will see whether there is sufficient time. Mr. Lowe, I believe you are the first witness.

PANEL CONSISTING OF MICHAEL F. LOWE, DIRECTOR, PALMETTO ALLIANCE; EVELYN J. BUSH, CITIZEN; DR. MARY T. KELLY, EXECUTIVE VICE-PRESIDENT, LEAGUE OF WOMAN VOTERS OF SOUTH CAROLINA; ALL FROM COLUMBIA, S.C.

Mr. LOWE. My name is Michael F. Lowe. I am director of the Palmetto Alliance, a nonprofit pubic interest organization in South Carolina dedicated to public education and advocacy on energy issues, particularly the issue of nuclear waste management.

We appreciate this opportunity to testify before this committee on this important issue of regional management of low-level waste.

South Carolina's opposition to our State's role as the Nation's nuclear dump is today widespread and well known. Many people view the Southeastern regional low-level radioactive waste management compact as a solution to the problem of nuclear garbage, but many, including our organization, do not. We believe implementation of this compact in a timely manner, while not impossible, will be extraordinarily difficult.

If in the next few years the regional compact "solution" fails, it will be South Carolinians who will suffer. Preventing this will take tough action by the decisionmakers representing South Carolina.

If approval is to be granted, Congress must not change the date the region may exclude nonregional waste from its regional dump. January 1, 1986, is that deadline established by both the Low-Level Radioactive Waste Policy Act of 1980 and the Southeast regional compact. Other regions may have their compacts approved by Congress before January 1, 1986. But, Mr. Chairman, it is a virtual certainty that most other States will not have an operating low-level nuclear waste dump by that time. No one wants a nuclear waste dump in their back yard. Both political and environmental concerns will make site selection a long and painful process. We believe other States will come begging South Carolina and the Southeast Compact Commission to accept their waste provided they are making a "good faith effort" to take care of their own.

The decision to accept or reject waste from other regions should be made by those authorized to do so in the compact. The intent of the Low-Level Waste Policy Act and the regional compacts are meaningless should Congress allow this deadline to slip further into the future.

Even more importantly, should South Carolina be forced to accept nonregional nuclear waste after 1986, the closure of the site as the regional facility in 1992 is jeopardized. It is apparent that the 1992 closure date is based on the volume of radioactive waste required to fill the available capacity of the Barnwell dump. These calculations do not include accepting nonregional waste after 1986. Additional nonregional waste placed in the dump after that deadline will accelerate the closure date as much as 2 years, based on volume limitations.

The ability of the Southeast region to establish another dump in another host State given the present schedule is very questionable. To do so on an accelerated schedule will be impossible. This could leave South Carolina with the same nuclear burden it has today, and probably in litigation with the operators of the site, other States, and the Federal Government.

The only option available to South Carolina to avoid any unfavorable situation is to withdraw completely from the compact. Unless this is done for health and safety reasons, withdrawal by the host State requires 4 years' notice to the other party States. Severing this agreement under any circumstance will undoubtedly be a cumbersome process.

The compact has many other flaws that endanger South Carolinians: Decisions which should be made in a democratic fashion by individual States are delegated to what is essentially a regional government, and no penalty other than vague and undefined sanctions is provided should a State or States take advantage of a host facility then withdraw when their turn as host comes around; no assurance can be had that a political decision will not override environmental concerns.

Mr. Chairman, we believe Congress was correct in requiring each State to manage its own low-level radioactive waste. We believe South Carolina is in a position to change for the better the method used to dispose of those nuclear wastes nationwide by forcing implementation of that policy as soon as possible. There are alternatives to simply dumping nuclear garbage in a hole. Because of opposition to waste dumping, several studies are underway to determine the feasibility of alternatives to below-ground disposal.

For too long we have accepted the quick and dirty "out of sight—out of mind" solution. All dumps leak. The question is how soon and how much damage is done. The concept of an above-ground at-reactor facility has many appealing features. It appears to be environmentally sound, politically expedient, and possibly economically competitive.

Regardless of what happens in other States it is very clear South Carolina has done its share and then some. Our organization would prefer South Carolina go it alone from here on out. But absent that solution, we look forward to 1986 and finally 1992.

We ask you, Senator Thurmond, to strongly oppose any attempt to change the 1986 deadline and to support our State's right to a nonnuclear future.

The CHAIRMAN. Thank you. We will be glad to hear from Ms. Bush now.

Ms. BUSH. I appreciate this opportunity to appear before this committee today. My name is Evelyn Bush, and I am here as a citizen interested in the future well-being of my native State.

South Carolina has buried the greatest part of the Nation's so-called low-level nuclear waste for over 10 years. Only South Carolina, of the top 10 low-level waste generating States, has a low-level waste disposal facility.

The CHAIRMAN. Excuse me. We have a time limitation of 5 minutes. We will put your entire statement in the record, but we're going to have to limit your oral statement to 5 minutes. I thought I would call your attention to that. You may summarize your statement. Your entire statement is going to go in the record so the whole committee will have the opportunity to read it.

You have a statement here that will probably take 15 or 20 minutes to read.

Ms. BUSH. I timed it at 10.

The CHAIRMAN. You may make what points you wish to make in 5 minutes. That limitation applies to the other witnesses, too.

Ms. BUSH. The regional compact has been sold to the South Carolina public as a way to get out from under this burden. But it appears to me highly unlikely that another southeastern State will accept South Carolina's nuclear waste because (1) commercial nuclear reactors and industrial operations located in South Carolina generate more low-level waste than similar activities in any other State in the Nation, and (2) other States in the Southeast Compact only have to pass a law to get out of this binding legislation.[1]

1992 CLOSING

The people of South Carolina believe that the State-owned Barnwell site will close in 1992, but the compact legislation only states that Barnwell will no longer be a regional facility after December 31, 1992.[2]

---

[1] Section 48-47-280—S.C.H2185.

[2] Article 3, section 48-47-30.10.

It appears to me even this could be endangered because Chem Nuclear and its parent company, Waste Management, Inc., have a legal and binding lease on the property until the year 2075.[1]

It is conceivable that a corporation whose chairman has said that he considered the Chem Nuclear facility as a profit-making venture, may not be amenable to closing its lucrative business to out-of-State waste, and by legal maneuvers, keep the site open until the lease expires.

1986 EXCLUSION

The people in this State have been led to believe that after January 1, 1986, only waste from the seven other southeast compact member States would be buried in Barnwell, but this is not necessarily the case.

The Southeast Compact is written so that the Southeast Compact Commission can vote in new members—States, regions, or groups of States.[2]

Additionally, South Carolina State officials have known for a long time that other regional sites would not be open by the January 1986 date set by the Low-Level Waste Policy Act for exclusion of nonregional waste.

In fact, an April 11, 1983/GAO/RCED–83–48 report suggests States with existing sites could temporarily keep their commercial sites open to all States. It appears to me that this information was not generally known in South Carolina, until after the compact legislation was signed into law.

LACK OF PROTECTION FOR SOUTH CAROLINA

The State-owned Chem Nuclear Waste Management low-level waste site has never had an environmental impact statement done. All other sites in the future will have this protection.

The State-owned facility does not have the benefit of the EPA's environmental standards for shallow land burial of low-level waste because these standards have not yet been developed.

Neither does the Chem Nuclear Waste Management site have the protection of the Nuclear Regulatory Commission's licensing requirements for land disposal of radioactive waste, because the Chem Nuclear site was grandfathered in.[3]

TERM "LOW-LEVEL" MISLEADING

Nuclear waste shipped to Barnwell is termed low level if it is shipped in small quantities. Uranium-235, which is fissionable and is the source of energy in a uranium-fueled nuclear reactor is accepted at Barnwell, and it is deadly for hundreds of thousands of years.[4] Also, high-activity control rods are accepted at the Barnwell facility.

The shallow graves in Barnwell presently contain millions of curies. I was given the figure last year of 3,560,729 curies buried as of May 1, 1982. Please note these figures do not include any decay. When I telephoned the DHEC Radiological Bureau last week for an update, I was given the figure of 2,145,456 curies buried as of December 31, 1982.

---

[1] Thompson Report, p. 16.

[2] Section 48–47–70.1, 2, and 9.; section 48–47–220 (A), (B), (C) and section 48–47–240.

[3] Draft NAC Report, p. 30. Notably absent from this compact are any provisions restricting the storage of waste from foreign countries. (R24, H. 2039, enacted Mar. 10, 1983, prohibited everything but foreign LLW.)

[4] Thompson Report, p. 12.

I was told the last figures were correct, the earlier figure was due to mistakes in reporting in earlier years. It was a math error, and the figures were changed accordingly.

In my opinion DHEC Radwaste section is understaffed and underfunded for the monumental job that has been assigned to it. There are only four inspectors for the nuclear waste. This figure of four includes the deputy burea chief as an inspector. The section has a high turnover rate in its employees, which I feel is due to low pay.

VOLUME VERSUS RADIOACTIVITY

The cumulative effect of the nuclear waste in the shallow burial trenches never seems to have been addressed. I feel this omission must be corrected since the site must take all the low-level waste generated by the Southeast Compact States. The Barnwell and Washington sites now accept 96 percent of the Nation's commercial waste.

Through December 1982, over 14 million cubic feet of low-level waste has been buried at the Barnwell site.[1]

While the volume of the waste coming into Barnwell was cut in 1979, the hazard, the radioactivity, has not been reduced.

I was told May 9, 1983, at the Chem-Nuclear site that the amount of radioactivity received at the site was "about the same" as before the 1979 volume limitation.

By cutting up and pressing down, and by burning, then sending the hot ashes to Barnwell, more hazard can be loaded on a truck. The trucks going to Chem-Nuclear, therefore, are potentially more hazardous with the concentrated waste.

This concern was reflected in the DRAFT Nuclear Advisory Council Report (which is staff work and has not been endorsed by the Council), Recommendation 1, b. This recommendation was that DHEC monitor shipments to the Barnwell facility to insure that the curie content levels resulting from volume reduction not exceed limits required to protect public health and safety.

STATE AUTHORITY/HOME RULE GIVEN TO COMPACT COMMISSION

Sections 48-47-190 and 48-47-200 restrict the laws that party States or any subdivision thereof may pass concerning matters dealt with in the compact.

In your letter to me dated May 2, 1983, Mr. Chairman, you wrote: "Finally, regarding the powers given to the compact committee, I believe that adequate authority must be given to effectively carry out the assigned responsibilities. This delegation of power is done with the full knowledge and approval of the State governments involved and is necessary to insure the successful implementation of the act."

I feel that the public is not aware of all the authority this compact hands to the Compact Commission, which is, if you will, a regional government.

---

[1] Thompson, p. 3.

STATE LIABILITY

South Carolina's financial liability under this compact has not been resolved. The people need to know if an additional burden is going to be put on them in the form of legislation to limit indemnification, a law similar to the Price-Anderson Act.

There are many more unresolved issues, one of which is major: The adequacy of the perpetual care and maintenance fund.

Another potential burden is the fact that Chem-Nuclear Waste Management, by giving 6 months' notice, can pull up stakes and leave.[1]

This option was written into the amendment to the lease agreement, signed by the Governor in 1979. It states: "The lessee further understands that if for any reason at any time it should default, or fail to comply with the terms of its license, or for any reason withdraw from the premises, the lessor would be required to assume surveillance and maintenance obligations and pay the surveillance and maintenance costs."[2]

It appears to me that if South Carolina may have to pay for the long-term care of the State-owned facility, it would be better not to have all the waste which will come into the site in the next 10 years under the compact.

I have been told that if South Carolina were to take its own low-level waste in perpetuity, the radioactivity in Barnwell would not be as great as it will be in the next 10 years under the compact.

South Carolina has many unresolved problems with the compact. I urge this committee, at the very least, to please go slowly in their deliberations of the Southeast Compact.

The 1980 Low-Level Waste Policy Act was rushed through the closing minutes of Congress. Both South Carolina compact legislations were passed in the closing days of the general assembly. I repeat, please do not rush this legislation.

I urge this committee to recommend an environmental impact statement be done for the Chem-Nuclear Waste Management site before Congress takes the major Federal action of approving the Southeast Compact.

I urge this committee not to ratify the Southeast Compact before compacts from the Northeast and other regions are in place and ready for ratification.

I feel the Southeast Compact as it is now written is potentially dangerous for South Carolina.

The health and safety of South Carolinians is at stake——

The CHAIRMAN. We will have to stop now. In fact I let you go over several minutes. We're glad to have you with us.[3]

We will be glad now to hear from Dr. Mary Kelly, representing the South Carolina League of Women Voters.

Dr. KELLY. Thank you, Senator. Thank you for the opportunity to be here.

I am Mary T. Kelly, vice president of the League of Women Voters of South Carolina. The league supports passage of S. 1749, the legislation for congressional approval of the Southeastern Low-Level

---

[1] Thompson, p. 15.

[2] Thompson, exhibit B.

[3] Documents referred to in the footnotes of Ms. Bush's statement can be found in Committee files.

Radioactive Waste Compact on the condition that there is no weakening of the compact's stated deadlines. We have been understandably disturbed by the GAO report which said that all States will not have access to regional sites by 1986 and that the three sites now in operation should continue to accept such wastes beyond that date.

We think that every State needs to get the clear message from Congress that the language of the compact is firm: South Carolina will not accept waste from outside the Southeast Compact region after 1986, and the site will close in 1992 for all out-of-State waste. As a matter of fairness and equity, the State which has accepted responsibility over so many years with the attendant risks, needs to be relieved of that burden. We also oppose any enlargement of waste management's Chem nuclear site at Barnwell.

Despite the fact that the Barnwell low-level site has been in use for so many years and will continue to function for party State waste until 1992, the Barnwell site is far from the geologically optimum site in the region, let alone the United States. For that reason alone, it is important that the deadlines be met. Those States which, for whatever reason, find themselves in 1986 without an outlet for their low-level waste should be encouraged to explore alternative methods of disposal. Indeed, landfiling in general should be reduced to a minimum. It is now realized that all landfills eventually leak. The Federal Government should give every encouragement to the development of alternatives to landfilling. We would like to see the Barnwell site closed for all disposal in 1992, including low-level waste generated by South Carolina utilities and industries.

We are grateful to Senator Thurmond and to Congressman Butler Derrick for their role in passage of the Low-Level Radioactive Waste Policy Act of 1980, which makes States responsible for the disposal of low-level waste generated within their borders. We thank them as well as Governor Riley for seeking effective solutions to the national low-level radioactive waste dilemma.

Thank you for the opportunity of entering these remarks in the record.

The CHAIRMAN. We're glad to have you with us. Thank you for your testimony, Mrs. Kelly. Our next witness is Ruth Thomas.

Ms. THOMAS. Thank you, Senator.

The CHAIRMAN. If you can't finish your statement in 5 minutes, we will put the entire statement in the record.

STATEMENT OF RUTH THOMAS, ON BEHALF OF AN AD HOC COMMITTEE OF CITIZENS OF SOUTH CAROLINA

Ms. THOMAS. My name is Ruth Thomas, and I appreciate the opportunity to be here today, and I am representing myself and an ad hoc committee of citizens.

On behalf of this committee and others with whom I work, I want to express appreciation for your part in the developing of the Low-Level Radioactive Waste Policy Act.

We agree with this 1980 law which makes each State responsible for its own commercially generated low-level nuclear waste. Because of our years of studying nuclear subjects, we recognize that developing effective radioactive waste compacts is an extremely difficult task.

It appears to us that one of the crucial challenges facing those who work on and make decisions related to regional compacts is the problem of how to make the compacts legally binding on all party States.

The testimony at State and Federal hearings on nuclear waste compacts prompted us to look closely at the issue of whether the Southeastern compact contained provisions which would prevent States from dropping out of the plan when they were chosen as regional nuclear disposal facilities.

State Senator Joe Strohl of Wisconsin called attention to the lack of adequate penalty provisions in the compact of his area when he testified at the March 2, 1983 hearing before the U.S. Senate Judiciary Committee. He testified that legislators in a large Midwestern State planned to adopt the region's compact because they wanted to keep that option open and could always withdraw if the State were eventually selected to host a site.

Several members of South Carolina's General Assembly expressed concern that States would stay in the Southeast compact while South Carolina was the regional nuclear burial ground and then back out when it was their turn to accept radioactive materials. This is in the hearing records of meetings before a number of people.

After a thorough study of the Southeastern compact, House bill 2185, members of the ad hoc committee, which I represent, worked together on a number of provisions which would help to keep States in a regional compact. We recognized that the success of the Southeast compact depends on its having legally binding provisions for insuring that the rights of all parties are protected.

Senator Thurmond, we have attached our recommendations. One of them is that each party State must post bond of $10 million to insure that it will serve as a regional disposal site. This bond would be forfeited in the event that they withdraw and the $10 million surety bond would be divided equally among the States which have served as disposal sites. Of course, it would be up to them what they used it for, but it's certainly something that is needed in relation to cleaning up and in relation to having a site in your State. There are many costs associated with that.

Then there is an amendment where the commission shall identify all host States for the development of subsequent regional disposal facilities within 1 year after the commission is constituted and shall seek to insure that each facility is licensed and ready to operate as soon as required and no later than 1991, and no substitutions for initially eligible parties.

We ask, Senator Thurmond, that you and your committee consider these amendments and our testimony here today, and we will be glad to answer any questions. We have spent a lot of time on this starting back into 1980.

[Amendments follow:]

PROPOSED AMENDMENT TO BILL NO. 2185, SOUTHEAST INTERSTATE LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT COMPACT

Amend the bill by striking lines 18 through 20 on page 5 of Section 48-47-50 (A) as contained in Article 5 of Section 1.

Amend the bill further, on page 6 by adding to Article 5 of Section 1, Section 48-47-50 (G), which shall read as follows:

"(G) Each party state must post bond of ten million dollars to ensure that it shall serve as the regional disposal site at the agreed upon time. Forfieture of such bond shall be governed by Section 48-47-280 of this compact."

Amend the bill further, on page 7 by striking lines 10 through 19 of item 6 of Section 48-47-60 as contained in Article 7 of Section [illegible]d insert a new item 6 which shall read as follows:

"6. The Commission shall identify all host states for the development of subsequent regional disposal facilities within one year after the Commission is constituted as provided for in Section 48-47-60 (D), and shall seek to ensure that each facility is licensed and ready to operate as soon as required but in no event later than 1991."

Amend the bill further, on page 12 by striking Section 48-47-220 (B) as contained in Article 13 of Section 1 and insert in lieu thereof a new paragraph (B) which shall read as follows:

"(B) No substitutions for initially eligible party states is possible. Eight is the maxinum number of states allowed in the compact."

Amend the bill further, on page 14 by striking lines 10 through 18 of Section 48-47-280 as contained in Article 13 of Section 1 and insert in lieu thereof the following lines:

"Section 48-47-280. Any party state may withdraw from this compact. Any state withdrawing prior to serving its term as a regional disposal site shall foefeit the ten million dollar surety bond. This bond shall be divided equally among the states which have already served as disposal sites."

Proposed by an ad hoc committee of
citizens
2908 Weybourne Way
Columbia, S. C. 29206

telephone 788-3513 or 782-3000

The CHAIRMAN. Thank you very much. I want to ask one or two questions. Mr. Lowe, it's my understanding that the Palmetto Alliance Commission initially supported the compacting process. Why did your organization change its position on this issue, or have you changed your position?

Mr. LOWE. We did not overtly support the compact in the beginning. We didn't object to it, however.

We believe, though, the closer you look at the progress made by other States in siting a compact, and even if you look at the situation that would develop if you tried to site a low-level waste up in Barnwell, S.C., today, we believe that the timeframe that is there just won't allow other States to form low-level waste sites, and we also believe that there are options that are available aside from the dumping of low-level nuclear waste into the ground, and were I a utility executive, sir, I would argue for storing low-level radioactive waste at a reactor site. It's politically expedient; economically it could be competitive; and they already have an environmentally sound site that's been approved by the Nuclear Regulatory Commission.

I think that option is very favorable to the industry.

The CHAIRMAN. I have a question I'm going to ask all four of you, and if you could answer in 1 minute, I would appreciate it.

It seems very clear to me that we all share a common goal, that of eventually ending South Carolina's role as a host State of either a national or a regional low-level waste disposal site. The primary issue seems to be how to best achieve this goal. Now here is the question I want to ask each of you. What alternatives do you suggest to the compacting process? Do you believe it would be best to first see whether the compact concept will work before threatening more drastic courses of action?

Mr. LOWE. I believe it's very clear now that the compacting process is not working. On paper, it's working. As far as siting a low-level dump for each region, we can't do it by 1986. Technically, there are options available to disposing of low-level waste, and I don't believe anybody has taken a very serious look at those options.

Ms. BUSH. I would like to see South Carolina exclude the waste from all other States after 1986 and make the effort to go it alone.

The CHAIRMAN. Dr. Kelly.

Dr. KELLY. We are testifying here today in favor of the passage of the compact legislation, but on the proviso that these dates be very firm. I think at this time, other States should get the message that right now, not in 1986, that South Carolina is not accepting compact waste in 1986, and they should be exploring alternatives, because it is probably true that landfills will not be available in 1986.

The CHAIRMAN. Ms. Thomas.

Ms. THOMAS. The reason that we proposed amendments with a surety bond, we felt that this would be a way of testing other States. If they were really interested and intended to stay in, they would with this provision. If they would not stay in, then this would be an indication that they did have in mind, or at least were considering at some later time, dropping out, so this would be a way of distinguishing and finding out fairly soon just how serious the States are in their interest in the compact or whether they're just using this as an option while they develop their own ways of more safely managing low-level radioactive waste.

The **Chairman**. I wish to thank all of you for your appearance here and appreciate your coming and giving your opinions on this important matter. Thank you very much.

Our next panel is Mr. Frank Coffman, Director, Office of Terminal Waste Disposal and Remedial Action, U.S. Department of Energy, Washington, D.C., and Mr. G. Wayne Kerr, Director, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, D.C. Would you gentlemen come up to table 7. We will give you 5 minutes to present your overall views. Mr. Coffman, you may proceed.

PANEL CONSISTING OF DR. FRANKLIN E. COFFMAN, DIRECTOR, OFFICE OF TERMINAL WASTE DISPOSAL AND REMEDIAL ACTION, OFFICE OF NUCLEAR ENERGY, DEPARTMENT OF ENERGY; AND G. WAYNE KERR, DIRECTOR, OFFICE OF STATE PROGRAMS, NUCLEAR REGULATORY COMMISSION; BOTH IN WASHINGTON, D.C.

Mr. **Coffman**. Mr. Chairman, I am pleased to make some comments at this compact hearing today. First, I would like to say that the Southeast Compact States are to be commended, as are the State and national political figures that brought this compact to a timely consideration by the Senate Judiciary Committee.

The **Chairman**. Mr. Coffman, would you pull that microphone up? Maybe that's not a microphone. Please speak louder.

Mr. **Coffman**. The Department of Energy fully supports early consent action by Congress. It would be our hope that this would be brought to the floor of the House and Senate during this session of Congress.

We think that the compact language, overall, is strong and provides a workable mechanism for the Southeast Compact.

Regarding the question of export bans, we believe that the provisions as presented in this compact provide a workable system, including provision for banning of waste for export from the region.

We believe that certain definitions, although they should not be materially changed, should be clarified to provide uniformity. For example, the disposal of low-level waste from Federal facilities is ambiguous in the Low-Level Waste Policy Act. Clarification of the definition of low-level waste and Federal research and development waste would not materially affect the compact, but it would make it clear and concise.

Article 5(B) provides that the host State has the right to shut down or limit access to a disposal facility if Congress materially changes the compact. You may wish to consider consent language which clarifies the applicability of that provision. With that, I will stop.

The **Chairman**. Mr. Coffman, could you make your staff available to work with the committee on this matter?

Mr. **Coffman**. Yes, sir. We would be pleased to do so.

The **Chairman**. That would be very helpful if you could.

Mr. **Coffman**. We would be very pleased to do that.

The **Chairman**. Our next witness is Mr. Kerr. Mr. Kerr, we're pleased to have you with us.

Mr. KERR. Mr. Chairman, I am pleased to be here today to testify on our specific comments on the Southeast Interstate Low-Level Radioactive Waste Management Compact.

The NRC has testified before this committee twice before with respect to regional low-level radioactive waste compacts—in November 1982 in Seattle, and in March 1983 in Washington, D.C. Both times we addressed particular issues where the NRC had reservations with the language used in the various compacts.

I am pleased to report to the committee today that this new Southeast Compact has addressed most of the concerns that the NRC has had in the past and we support passage of congressional consent legislation for this compact.

Earlier versions of the Southeast Compact contained problem language common to other compacts relating to regional waste management, including treatment, storage, and transportation, rather than simply disposal of waste; potential duplication of the regulatory authority of the agreement States and/or the NRC; State inspection of NRC licensees; restrictions on the export of waste from the region; an unnecessary level of detail with respect to waste contaminated with transuranic material; and definition of defense waste. We would have you note that although the description of defense waste in article I is inconsistent with the description in article 6(A)(8), we believe that the latter is operative and therefore controlling.

The Southeast Interstate Compact was renegotiated in the fall of 1982 by the eligible States in the Southeastern United States and the compact has now been reenacted by all but one of the eligible States in the 1983 legislative session.

We would call attention to only one anomaly in the Southeast Compact. Article 3(C) states that each party must establish the capability to regulate, license, and insure the maintenance and extended care of any facility within its borders. This section may appear to mandate that party States seek, and that NRC enter, agreements under section 274B of the Atomic Energy Act of 1954, as amended, providing for NRC discontinuance and State assumption of regulatory authority.

We note that one State in the compact, Virginia, is not an agreement State nor are its representatives actively negotiating with us at this time to become an agreement State. Furthermore, a situation could arise in the future where an agreement State gives up its agreement and the regulatory authority returns to the NRC.

In view of those circumstances where a party State might not in fact be an agreement State, we recommend Congress clarify this language of the compact.

It has been an arduous task to reach this point of requesting congressional consent to a detailed interstate compact that was required to be passed in similar language by the legislatures of the eligible States—in this case, passed twice in 2 years. The Southeastern States moved quickly to respond to the challenges of the Low-Level Radioactive Waste Policy Act of 1980. The States and their negotiators who developed this compact are to be commended.

Many problems remain before all of the low-level radioactive waste in the country is disposed of in licensed regional disposal sites. Nevertheless, the granting of congressional consent will be an important milestone toward achieving the goal whereby each State is responsible for providing for the disposal of low-level radioactive waste generated within its borders and toward carrying out the policy of the Federal Government that low-level waste can be safely and efficiently managed on a regional basis.

In addition to the present bill to grant the consent of Congress to the Southeast Compact, similar consent bills have already been introduced in Congress for the Northwest and Central Compacts, and I understand legislation will shortly be introduced for the Rocky Mountain Compact. I hope that the Midwest and Northeast Compacts continue their progress to the point of submission to Congress.

I would be happy to answer any questions you might have.

The CHAIRMAN. Mr. Kerr, I have some questions, and I thought it would be satisfactory if I submit them and let you answer them for the record.

Mr. KERR. Certainly. I will be happy to.

The CHAIRMAN. And Mr. Coffman, by the way, are you doctor or mister?

Dr. COFFMAN. Dr. Coffman.

The CHAIRMAN. I apologize. Mr. Kerr, how about you?

Mr. KERR. I'm mister.

The CHAIRMAN. So I got you right. Thank you, and if you all will answer the questions we will submit to you for the record. I think that will give you an opportunity to concentrate on those questions, and your entire statement will go into the record.

Do you have anything else you would like to say to us?

Dr. COFFMAN. I have one comment that I inadvertently omitted. That is that we support retaining the 1986 date; that is, we do not support slipping or deferring that 1986 exclusionary date at this time. We believe that's a beneficial provision which will encourage States which do not have disposable facilities to move more expeditiously.

The CHAIRMAN. Mr. Kerr, would you allow your staff work with our committee on this matter, too?

Mr. KERR. I would be happy to.

The CHAIRMAN. This is an important issue. Twenty-five years ago waste disposal wasn't as carefully considered. Now it's very vital. As time passes, conditions change; and we have to meet changing conditions. We appreciate your appearing here and your answering the questions that we will submit to you for the record. We also appreciate you letting your staffs work with our committee. Please contact Miss Rogers and Dr. Tennant.

Dr. Tennant, do you have anything you wish to say?

Dr. TENNANT. No, sir.

The CHAIRMAN. Thank you very much for your appearance.

[Prepared statement of Franklin E. Coffman and responses to written questions follow:]

STATEMENT OF FRANKLIN E. COFFMAN
DIRECTOR, OFFICE OF TERMINAL WASTE DISPOSAL
AND REMEDIAL ACTION
U.S. DEPARTMENT OF ENERGY

Mr. Chairman and Members of the Committee: I am pleased to appear before you regarding the Southeast Interstate Low-Level Radioactive Waste Management Compact and S. 1749 to grant the consent of Congress to this Compact. In my testimony today, I shall discuss the Department of Energy's views regarding disposal of low-level radioactive waste, address specific issues pertaining to the Southeast Compact, and then comment on the effect Congressional consent may have on establishment of a National low-level radioactive waste management system.

The Low-Level Radioactive Waste Policy Act (P.L. 96-573) establishes as National policy that each State is responsible for assuring the availability of capacity for the disposal of low-level radioactive waste generated within its borders, except for waste generated as a result of atomic energy defense activities of the Secretary or federal research and development activities. That statute also encourages the establishment of a regional approach to low-level radioactive waste management.

The Southeastern States are to be commended for having drafted and approved an interstate compact for the management of low-level radioactive waste in their region. The member States have demonstrated a strong commitment to fulfilling their responsibilities for low-level waste management and disposal under the Act.

I would like to make several general points before getting to specific Southeast Compact issues. First, it is our understanding that, except for establishing State responsibility and endorsing a regional approach to low-level waste management and disposal, it was Congress' intent not to change the general approach to low-level radioactive waste management that has been in existence for the past 20 years. We agree that changes in the current system should be minimized.

Second, any changes to the present system should be consistent with the intent of the Act; namely, that all the States should share responsibility for the disposal of low-level waste and not rely solely on the existing facilities in the States of South Carolina, Washington, and Nevada. Consideration must be given to the diverse concerns of federal, regional, State, local and private interests. States must complete negotiations to accommodate these concerns as soon as possible if they are to meet their responsibilities under the Act.

Third, if Congress grants consent to any regional compact to exclude out-of-region waste before all regions or States have an available disposal facility, it is essential that provisions be made for those States without an available disposal site to manage their wastes adequately on an interim basis.

Finally, we believe that the 1986 for excluding wastes from non-member States should not be extended. The States were given the responsibility for management of their low-level radioactive waste; and overall, they are making good progress in carrying out this responsibility under the conditions set forth in the Act. In our judgment, an extension of the 1986 exclusion date could reduce the pace at which States are proceeding. States and regions are exploring methods and agreements for interregional cooperation, in case some States or compacts do not attain disposal capacity by 1986. Such interregional agreements are the most appropriate way to resolve short-term problems with adequate disposal capacity and to establish long-term contingency arrangements. They should be encouraged.

For the past 3 years, the Department of Energy has conducted a program of institutional and technical support to assist the States in meeting their responsibilities under the Act. We feel we have been successful in informing officials and the public about low-level waste, in providing data and analytical methods to help States analyze the nature and magnitude of the problem, and in providing improved techniques for packaging, handling, and disposal of low-level waste by shallow land burial. We will continue to facilitate State efforts in this area as regions and States move from the present phase of compact formation to the next phase of site selection, characterization, licensing, and initial operations.

I will turn now to several specific points of concern. All of the compacts need some clarification to assure a system of low-level waste disposal that accommodate all low-level radioactive waste, including Federal agency wastes. The definition of low-level waste varies among the compacts. Also, the definition in the Nuclear Waste Policy Act of 1982 differs from that used in the Low-Level Radioactive Waste Policy Act. We believe that Congress, to assure a workable nationwide system, should adopt the definition used in the Nuclear Waste Policy Act of 1982 in Congressional consent language for each compact. The definition of low-level waste in Article 2(6) of the Southeast Compact is almost the same as that used in the Nuclear Waste Policy Act of 1982 so that specification of definition in consent language would not materially change the compact.

Regarding the disposal of low-level radioactive waste generated by the Federal Government, several Federal agencies in addition to DOE, including the Departments of Defense, Agriculture, and Health and Human Services, the Veterans Administration, and the Environmental Protection Agency, generate low-level radioactive waste. Currently these agencies (with the exception of DOE) routinely ship low-level radioactive waste to commercial facilities for disposal. In our judgment, it was not the intent of the Act to alter this practice.

The Act explicitly defines atomic energy defense activities of the Secretary of Energy but leaves the term "Federal Research and Development Activities" undefined. The ambiguity of this term has led to speculation as to the disposal of low-level radioactive waste from various federal research and development activities. Therefore, we also support Congressional consent language defining the term "Federal Research and Development Activities" to ensure that the federal agencies presently disposing of their low-level waste in commercial facilities have continued access to such facilities.

The question of how federal low-level radioactive waste would be handled under the Southeast Compact needs clarification. Article 1 states that each State is responsible for providing for capacity for disposal of low-level radioactive waste generated within its borders, except for defense activities of the Federal Government. Article 6A(8) states that the Compact does not affect the generation, treatment, storage, or disposal of waste generated by the atomic energy defense activities of DOE or federal research and development activities. Article 3(A) provides that all wastes generated within the borders of a party State shall have the right of access to the disposal facility. We support Congressional clarification of the Compact to allow continued disposal of federally generated low-level waste.

Article 5(B) of the Compact would grant the host State the right to terminate or limit access to the disposal facility if it determines that Congress has materially altered the conditions of the compact. Although in our agencies none of the conditions we have recommended would constitute a material alteration to the Compact, we believe that this provision should be deleted because: (1) it is inconsistent with the intent of the Low-Level Radioactive Waste Policy Act, which provides Congressional authority to grant consent to regional compacts and to assure that workable provisions are incorporated into the regional compacts throughout the United States; and (2) enactment of this provision may allow the host State to unilaterally, and without regard to the impacts on other compact members and waste generators, close or limit access to the regional disposal facility.

The Compact permits the imposition of a ban on the export of low-level radioactive waste outside the region after January 1, 1986. Allowance for export bans could stabilize the management of low-level radioactive waste within the region and add predictability to economic projections for regional disposal site operations. We do not oppose export bans as long as exceptions based on health and safety, economic, or management concerns can be granted. Article 4(L) of the Southeast Compact appears to allow for such exceptions to be granted.

We believe that Congressional approval of the Southeast Compact would stimulate States outside this region to increase their efforts to develop a regional low-level radioactive waste management system. Arrangements can be made by regions without sites to use interim storage or to develop interregional disposal agreements with other regions for temporary use of their disposal facility. The Southeast Low-Level Waste Compact Commission is empowered to negotiate agreements with any person for access to the regional facility, and we believe that such a provision is desirable to provide some flexibility for the National system, especially in its early phases of operation. We believe that the Southeast Compact Commission should negotiate agreements with siteless regions for some degree of continued use of the Southeast disposal facility, provided these regions are pursuing a "good faith" effort to provide for their own disposal site at the earliest possible time. Congress may wish to express its intent on this issue. However, absence of negotiated agreements at this time should not be an impediment to Congressional consent. Timely Congressional consent should encourage the siteless regions to expedite "good faith" efforts to provide a disposal site.

In summary, the Department supports early Congressional discussion of and consent to the Southeast Compact as well as the other compacts now before the Congress, provided suitable provisions are made for an equitable and workable system for managing low-level radioactive waste Nationwide. Approval of these compacts as they are introduced will reaffirm the Congressional commitment to timely establishment of a regional system of low-level radioactive disposal facilities to be managed by the States.

DEC 12 REC'D

Department of Energy
Washington, D.C. 20585

December 12, 1983

Honorable Strom Thurmond
Chairman, Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

On September 6, 1983, Franklin E. Coffman, Director of the Office of Terminal Waste Disposal and Remedial Action, appeared before the Committee on the Judiciary to discuss S. 1749, concerning the Southeast Interstate Low-Level Radioactive Waste Management Compact.

Following that hearing, you submitted written questions for responses to supplement the record. Enclosed are the answers to those questions.

If you have any questions, please call Hank Edler or Tom Pretorius of my staff on 252-4277. They will be happy to assist you.

Sincerely,

for Thomas H. Pretorius
Robert G. Rabben
Assistant General Counsel
for Legislation

Enclosure

cc: Mr. Paul Guller
Chief Printer

Responses to Senator Thurmond's Questions

Question 1: Do you view the Southeast Compact as being in compliance with the provisions of the Low-Level Radioactive Waste Policy Act of 1980?

Answer: Yes. In our view, the Southeast Compact generally complies with the Low-Level Radioactive Waste Policy Act (the Act). However, there are certain provisions in the Compact that appear to be inconsistent with the Act. See answers to Questions 7 and 9 for an explanation of such provisions.

Question 2: Do you believe that the 1986 date, after which Congressionally-approved compacts may exclude from their sites waste generated outside that region, should be altered in any way?

Answer: We believe that the 1986 date should not be altered because such an extension would reduce the pace at which States are proceeding. We consider it imperative that States and regions explore interregional agreements for cooperation after 1986.

While an extension may relieve some short term pressure, it may also penalize those States and regions that are responsibly complying with the Act and planning on the 1986 date. It might also delay long-term plans for self-sufficiency in terms of providing disposal capacity by regions without sites. Therefore, it is DOE's view that the exclusion date should not be altered.

Question 3: A number of interested parties have raised the issue of what might happen in 1986 should Congressionally-approved compacts with disposal sites decide to exclude waste from regions which did not yet have sites on-line. Do you believe that this is an issue most appropriately resolved by Congress or by the States themselves through interregional agreements?

Answer: If Congress grants consent to any regional compact to exclude out-of-region waste before all regions or States are self sufficient, it is essential that provisions exist for those States without disposal capacity to safely handle their wastes on an interim basis. States and regions are exploring methods and agreements for interregional cooperation to provide for those States or compacts which will not attain disposal capacity by 1986. Such interregional agreements together with concerted efforts to reduce the volumes of waste requiring disposal are the most appropriate way to resolve short-term disposal capacity problems and to establish long-term contingency arrangements. They should be encouraged. Maintenance of Congressional awareness of the process States are using to negotiate agreements is appropriate for the near term. In early 1985, if interregional agreements are not forthcoming, the Congress could then assess the need to address this issue.

Question 4: In light of the possibility that other regions may not have new sites on-line by 1986, what alternatives do you believe are available to siteless regions to handle, within their own region, the low-level waste which they generate? For example, a recent GAO study has suggested that the States might store low-level waste in centrally located, warehouse-type facilities until new sites are opened. Has the Department encouraged this approach and offered to assist regions in pursuing such options?

Answer: Technology is available for regions without sites to store low-level wastes on an interim basis at the site of waste generation or at a central facility. Technology also exists to reduce waste volume at the point of generation or at a larger facility serving multiple generators. Individual generator decisions to pursue onsite interim storage or volume reduction options are currently based on economic and safety considerations as well as technical feasibility. Regulatory authorities can approve these practices through review of existing radioactive materials licenses or facility operating permits. Development of a centralized storage facility would require long-range planning, commitments for receipt of wastes, and time-consuming reviews.

Utilities are currently reducing waste volumes substantially and are investigating the feasibility of improved waste treatment on a utility-specific basis and through organizations such as the Edison Electric Institute and the Electric Power Research Institute. The Department is also supporting several waste treatment technology transfer projects. In addition, a large number of utilities have built or are now designing onsite interim storage capacity. It is reasonable to expect that many utilities will be able to store their low-level wastes on an interim basis by 1986. Due to regulatory considerations and liability issues, storage of off-site wastes from other generators at these utility facilities may not be feasible.

Individual hospital, research institution and industrial waste generators can employ volume reduction techniques such as compaction or incineration. The Department has supported an incinerator demonstration project and provided technical information to encourage consideration of volume reduction. As with utilities, these generators could store waste on an interim basis prior to disposal as radioactive waste, or they could retain it for decay to background levels when less restrictive disposal would be possible. While these generators can pursue volume reduction and storage options through existing licenses, costs and space availability are often significant constraints.

As noted, development of a central facility to reduce volume of wastes would involve complex regulatory consideration. Such an approach also requires multiple handling and transport of waste containers. However, depending on waste types and volumes involved, users of a central facility may incur lower costs than would be possible at an on-site facility. (For those generators that have already invested in on-site systems, switching to a central facility may be uneconomical.) Regulatory agencies do not currently compel waste volume reduction or storage.

The Department has encouraged and supported States and regions in the development of new disposal capacity and believes regions without disposal sites should continue to concentrate efforts in this area. The institutional challenges of siting and licensing a centralized storage or volume reduction facility would be similar to those encountered in siting a disposal facility, and the problem of ultimate disposal would be further delayed.

The Department's position on this issue is to encourage individual generators to evaluate volume reduction and interim storage options, and to implement such practices in a timely fashion where this is feasible from the standpoints of available technology, cost-effectiveness, and minimization of worker exposure. In light of the approaching 1986 deadline, such efforts might best be accelerated with the objective of reducing waste volumes requiring out-of-region disposal.

Regionalized storage of low-level wastes is not considered a practical near-term alternative due to regulatory constraints and institutional issues related to siting. Regions should concentrate on establishing disposal capacity as a first priority.

Question 5: In earlier testimony before this Committee, NRC has expressed concern that many of the compacts go beyond "disposal" of low-level waste to address issues of "management" of such waste. What is your view on this issue, and what concerns, if any, do the provisions of the Southeast Compact raise in this regard?

Answer: The terms "manage" and "disposal" are both used in the Low-Level Radioactive Waste Policy Act in relation to State responsibilities. "Disposal" is defined in the Act, but "manage" is not. Limiting the authority of regional compacts to disposal seems contrary to the Act's charge for regions to manage low-level wastes safely and efficiently. For example, safety and efficiency considerations require regional management planning to consider steps prior to ultimate disposal that could effect the viability of a regional disposal operation.

The compacts, including the Southeast compact, have indicated that management activities would not regulate health and safety matters that are the responsibility of the NRC and Agreement States. We agree. In order to have a viable regional disposal operation, the compacts can not be limited to merely providing a disposal site. However, the States must not be permitted to interfere with the already existing comprehensive system of federal regulations which has provided adequate control of low-level waste. With this understanding, the Department of Energy supports in concept the need for regional waste management as reflected in regional compacts. This will allow Compact Commissions to consider management matters important to efficient disposal of wastes, promoting an integrated approach to waste disposal and greater certainty that the systems developed will be acceptable to both compact party States and host States for new disposal facilities.

Question 6: Is it your view that Congress should take action on the compacts now pending before it or should Congressional consent to any of the compacts be delayed until all compacts have been submitted to the Congress?

Answer: We believe that Congressional approval of the compacts now pending before it would encourage States outside these compact regions to increase their efforts to establish operating compacts or otherwise make more progress in providing for new disposal capacity.

The Department supports early Congressional consent to the compacts now before it. Approval of these compacts as they are introduced will reaffirm the Congressional commitment to timely establishment of a regionally-oriented system of low-level radioactive waste disposal for the United States.

Question 7: What is your understanding of the provisions of the Southeast Compact regarding disposal of Federal waste at the Southeast regional facility? Do you believe its provisions to be generally consistent with those of the Policy Act?

Answer: Although the Southeast Compact contains some apparently conflicting provisions regarding federal wastes, we believe that the provisions of the Compact regarding federal waste are generally consistent with those of the Act.

However, Article 1 of the Compact, entitled "Policy and Purpose," states that the party States recognize and declare that each State is responsible for providing for the availability of capacity either within or outside the State for disposal of low-level radioactive waste generated within its borders, except for "waste generated as a result of defense activities of the federal government or federal research and development activities." This statement differs from the policy statement set forth in §4 of the Act, which provides that the States are responsible for such availability of capacity, except for "waste generated as a result of defense activities of the Secretary [of Energy] or federal research and development activities." The Act defines atomic energy defense activities of the Secretary to include certain activities and facilities of the Department of Energy (DOE). The term "defense activities of the federal government" used in the Compact is broader than the term "defense activities of the Secretary" used in the Act. For example, routine waste generated from non-research and development activities of the Department of Defense would be the State's responsibility under the Act, but this language would appear to preclude this responsibility. Therefore, if this provision of the Compact has legal effect, it would define the States' responsibility for low-level waste disposal capacity more narrowly than the Act does.

However, this statement, appearing in the Policy and Purpose Article, appears to be merely a declaration of policy and not a prescriptive provision delineating rights and obligations. As a general rule, the policy section of a statute is available for clarification of ambiguous provisions of a statute, but may neither be used for the creation of ambiguity nor constitute an operative section capable of overriding other specific provisions. Sands, Sutherland Statutory Construction §2012 (4th ed. Chicago 1972).

Article 3(A) of the Compact, entitled "Rights and Obligations," grants each party State the right to have all wastes generated within its borders stored, treated, or disposed of at regional facilities or other facilities made available to the region. There is nothing in the Compact that would exclude federal wastes from the phrase "all wastes generated within its borders" used in Article 3(A).

The Compact may have assumed a greater responsibility for the States than that required by the Act, since Article 3(A) appears to provide for disposal capacity for all low-level waste generated within the party States, including all federal wastes. However, Article 6(A)(8) repeats the requirement of the Act that nothing in the Compact shall affect the generation, treatment, storage, or disposal of waste generated by DOE defense activities or federal research and development activities, as defined in the Act. This provision, together with Article 3(A), can be interpreted to imply that the regional facility will accept all federal wastes generated within a party State in a manner that will not affect the existing disposal scheme for DOE defense wastes or federal research and development wastes. Since all DOE wastes are presently disposed of in federal disposal facilities, and other federal wastes are disposed of in the same manner as commercially generated wastes, Articles 3(A) and 6(A)(8) can be collectively interpreted to grant party states the right to dispose of all non-DOE federal waste generated within their borders in regional disposal facilities or other facilities made available to the region.

Recognizing that these provisions may be subject to a different interpretation, we suggest that the intent of Congress and the party States be clarified either in consent language or the legislative record.

Question 8: Article 4 of the compact gives the Southeast Commission the authority to enter into agreements for the import of waste into the region and the export of waste generated within the region. Do you view this provision as banning export of waste except with approval of the Commission?

Answer: No. The provision granting authority to enter into agreements for the import and export of waste (Article 4(E)(9)) does not constitute an export ban. However, Article 4(L) does provide the Commission with the authority to do this. After January 1, 1986, the Southeast "Commission may prohibit the exportation of waste from the region for the purposes of management," if Congress consents to the Compact.

Question 9: Article 5, paragraph (B), of the Compact states in part the following:

> A host State may terminate or limit access to its regional facility if it determines that Congress has materially altered the conditions of this compact.

What, in your opinion, would be the legal effect of Congress giving its consent to such language?

Answer: If Congress consents to the above-quoted language, Congress would be recognizing the right of all party States, including the host State, to reject a condition placed on a compact by Congress. Petty v. Tennessee-Missouri Bridge Commission, 359 U.S. 275 (1959). Since all party States have the option to reject or accept Congressional conditions to a compact, Petty, supra, such language is not necessary to accomplish that purpose. This language could be interpreted to also permit a host State to limit access to the regional facility before January 1, 1986. This interpretation would conflict with Article 4(L) of the Compact and §4(a)(2) of the Act, which permit restriction of the regional facility to wastes generated within the region only after January 1, 1986. Finally, the language could cloud the Compact by appearing to allow a host State that has acquiesced to Congressional conditions to the Compact to later claim a material alteration in order to terminate or limit access to its regional facility. Therefore, we believe that it is preferable for Congress not to consent to such language or to clarify the provision in the legislative record.

Question 10: Do you view any of the provisions of the Southeast Compact as becoming effective prior to Congressional consent? If so, which provisions? What activities, if any, do you believe are appropriate for compact commissions to undertake prior to Congressional consent?

Answer: Section 4(a)(2)(B) of the Act states that compacts entered into pursuant to §4(a)(2)(A) "shall not take effect until the Congress has by law consented to the compact." Section 4(a)(2)(A) provides that States may enter into such compacts as may be necessary to provide for the establishment of regional disposal facilities for low-level radioactive wastes. Therefore, a literal interpretation of §4(a)(2)(B) would lead to the conclusion that compacts for the establishment of regional disposal facilities do not become effective prior to Congressional consent. Nonetheless, it appears that States can carry out those activities that would be permissible without Congressional consent to the Compact, although such activities would not technically be carried out pursuant to the Compact because the compact would not yet be effective.

States can engage in joint activities without Congressional consent as long as such combination does not tend to "the increase of political power in the States, which may encroach upon or interfere with the just supremacy of the United States." New Hampshire v. Maine, 426, U.S. 363 (1976) at 369, quoting Virginia v. Tennessee, 148 U.S. 503 (1893) at 510. Furthermore, this rule applies to multistate agreements involving independent administrative bodies. U.S. Steel v. Multistate Tax Commission, 434 U.S. 452 (1978). Therefore, actions taken by the Southeast Compact Commission or party States that do not encroach upon the supremacy of the federal Government may be conducted prior to Congressional consent of the Compact. The validity and effect of such actions would be determined not by the provisions of the Compact, but by whatever terms and conditions are applicable to each State represented on the Commission pursuant to each State's laws and regulations. We are not in a position to delineate specific activities.

We suggest that prior to approval by Congress, it may be appropriate for the compact Commission to proceed with development and refinement of by-laws and administrative procedures for compact operations. They might also begin work on regional management planning, if required by the compact. Specific steps for identifying State(s) to host new facilities, if needed, could also be explored. Discussions with other compact commissions to develop an inter-regional framework for access to existing facilities after 1986 could also be considered.

Question 11: Please comment with regard to the following issues which have arisen during discussions with the States regarding disposal of Federally-generated waste at regional facilities:

a. which Federal generators should have access to regional sites;

Answer: All federal generators, except the Department of Energy, should have access to regional sites. These federal generators presently ship their low-level waste to commercial facilities for disposal. In our judgement, it was not the intent of the Low-Level Waste Policy Act to alter this practice. The States should retain the option to accept, at their discretion, waste generated as a result of atomic energy defense or research and development activities of the Secretary of Energy.

Question 11: b. whether Federal generators should be allowed to store waste at other regional sites without permission of the region within which the waste was generated;

Answer: With respect to disposal of their wastes, federal generators should be treated in the same manner as other commercial generators. Each compact commission/board has the authority to grant exceptions and a waste generator could petition for use of another site.

We suggest that the Congress consider adding language for an exception in cases where the President or his designee determines that there is no disposal facility in operation in the region in which the federal activity is located and that immediate disposal of such federal waste is required for reasons of national security or public safety.

Question 11: c. whether there should be a percentage limitation on the amount of Federal waste which may be disposed of at a regional facility;

Answer: There should be no percentage limitation on the amount of federal waste which may be disposed at a regional facility. The Low-Level Waste Policy Act does not authorize any such limit. We believe that the intent of the Act was that all non-Department of Energy generated low-level waste would be disposed in a State or regional facility. Additionally, we have conducted a review of current quantities of such federal waste, which indicates that it is a small percentage of the total volume disposed commercially--less than 5 percent.

Question 11: d. whether on-site inspection by the States of Federal generators should be allowed; and, if so, under what conditions;

Answer: Since Agreement States do not have radiological health and safety authority, under §274.b of the Atomic Energy Act (AEA), over reactors or over federal installations, they do not have authority to inspect at such sites. However, under §274.i of the AEA, 42 U.S.C. §2021(i), the NRC, in carrying out its licensing and regulatory functions, may enter into agreements with any State or group of States to perform inspections or other functions on a cooperative basis as the NRC deems appropriate. The NRC has proposed an agreement under §274.i that would allow a State to carry out an inspection under a compact at a reactor site, but would not permit State inspections of federal facilities without prior consent. Paragraph 5 of the proposed agreement states that:

> Nothing herein shall be deemed to authorize the State to inspect or otherwise enter the premises of any licensee of the Commission which is a federal instrumentality without the prior consent of the licensee.

Thus, if a State has not executed an agreement under §274.i it is preempted by the AEA from conducting inspections of any federal facility; if it executes an agreement, it will be prohibited from conducting inspection of federal facilities except where the agencies operating those facilities give their prior consent.

Onsite inspection at federal installations of waste packages and transport vehicles should be allowed as described in the NRC's proposed Sec. 274.i agreement. We believe that access to security areas or classified operations at the site of generation of such waste at defense installations should not be authorized. For those facilities the inspection could take place at some intermediate location.

Question 11: e. whether Federal generators should be subject to the same regulations, requirements, fees, etc., that are applicable to commercial generators.

Answer: Yes, under business as it exists today, federal agencies meet the same technical regulations and requirements that are applicable to commercial generators. We do not believe this should be changed.

Regarding fees, each of the compacts has a provision which is intended to assure a generally available source of funds for maintaining the disposal facility. Where payment is for service rendered, payable to the facility operator, violation of federal law is not involved. However, if a financial imposition is laid directly upon the Federal Government by a State, it would be prohibited whether characterized as a fee or tax, even if the facility operator is the collector.

We suggest that the Congress consider adopting language that allows the federal agencies to pay reasonable service surcharges imposed by the compact commissions or party States to the same extent as any nonfederal waste generator.

CHAIRMAN

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

February 8, 1984

The Honorable Strom Thurmond
Chairman, Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Thank you for your letter dated November 8, 1983, addressed to G. Wayne Kerr, Director, Office of State Programs. Enclosed are responses to the questions posed in your letter for inclusion in the record of the September 6, 1983 hearing on the Southeast Interstate Low-Level Radioactive Waste Management Compact.

With regard to your request for appropriate consent language for each of the four compacts, we are providing proposed Congressional consent language under separate cover at the request of your staff.

Sincerely,

Nunzio J. Palladino

Questions and Answers on the Southeast Interstate Low-Level Radioactive Waste Management Compact (S. 1749)

QUESTION 1. Do you view the Southeast Compact as being in compliance with the provisions of the Low-Level Radioactive Waste Policy Act of 1980?

ANSWER.

The Commission believes that the Southeast Compact generally complies with the Act. However, there are a number of regulatory and statutory concerns with respect to the scope of the Compact, export and import restrictions, Agreement States, and the definition of Federal waste. Certain of these concerns should be addressed through appropriate conditions in Congressional consent language for the Southeast Low-Level Radioactive Waste Management Compact. Each concern is discussed below. Accordingly, proposed consent language has been provided under separate correspondence.

Scope of the Compact

As with the other compacts submitted to Congress, the Southeast Compact goes beyond disposal into almost all aspects of low-level radioactive waste management. The Low-Level Radioactive Waste Policy Act of 1980 confers authority on the States to enter into compacts with respect to the disposal of low-level radioactive waste. It does not expressly confer authority to the States with respect to generation, transportation, storage or treatment, or any other activity that does not constitute "disposal." However, the Southeast negotiators believe, as do those for the other compacts, that management functions dealing with economics are required to implement the policy objective of the Federal government that "low-level radioactive waste can be most *safely and efficiently managed on a regional basis.*" [Sec. 4.(a)(1)(B) of the Low-Level Radioactive Waste Policy Act of 1980 (Public Law 96-573).]

The Commission supports this view and believes that no specific consent language is necessary to implement this aspect of the Compact.

Export Restrictions

Article 4(L) declares that after January 1, 1986, the Compact Commission may prohibit the exportation of waste from the region for the purposes of management. In addition, Article 4(E)(9) gives the Compact Commission the duty and power to enter into agreements with any person, State, or similar regional body or group of States for the right of access to facilities outside the region for waste generated within the region. The NRC interprets these provisions as permissive rather than mandatory export restrictions.

The export of region waste is not addressed in Public Law 96-573. Such a restriction in the Compact could place a burden on interstate commerce. While the NRC believes that it may be useful for economic reasons to allow the permissive export restriction to remain in the compact, it is appropriate to include provisions for exception to such a restriction for health and safety reasons. Accordingly, the NRC has provided consent language under separate correspondence.

Import Restrictions

Article 4(L) declares that after January 1, 1986, the management of low-level radioactive waste at regional facilities is restricted to that which is generated within the region, and to that which is generated outside the region in nonparty States when authorized by the Compact Commission pursuant to Article 4(E)(9). Because of the definitions of "facility" and "management" contained in Article 2, importation for treatment and storage is restricted in addition to disposal. This is a broader restriction than is allowed by Public Law 96-573, which confers authority to restrict import for "disposal" only, and may place an undue burden on interstate commerce.

The NRC notes that implementation by all Agreement States of the waste manifest system currently in place in Section 20.311 of NRC's regulations would provide sufficient information to identify waste generators and thus provide a means to prevent the unauthorized disposal of out-of-region waste in a regional disposal facility.

Agreement States

Article 3(C) states that each party must establish the capability to regulate, license and ensure the maintenance and extended care of any facility within its borders. This section may appear to mandate that NRC enter Agreements under Section 274b of the Atomic Energy Act of 1954, as amended, providing for NRC discontinuance and State assumption of regulatory authority. One State in the compact, Virginia, is not an Agreement State nor are its representatives actively negotiating with NRC at this time to become an Agreement State. Furthermore, a situation could arise in the future where an Agreement State gives up its agreement and the regulatory authority returns to the NRC.

While we believe that party States may bind themselves to seek to become Agreement States, it is important that the Compact be construed to preserve NRC's authority to reject, modify, or accept an agreement, or to resume regulatory authority if a State relinquishes its agreement. While we believe that Articles (6)(A)(1) and (2) of the Compact probably accomplish this end, language in the legislative history to this effect would be helpful.

Definition of Federal Waste

Article 1 declares that the party States are responsible for "providing for the availability of capacity either within or outside the State for disposal of low-level radioactive waste generated within its borders, except for waste generated as a result of defense activities of the federal government or federal research and development activities." (Emphasis added.) Although the terminology for describing defense waste in Article 1 is not completely consistent with the description in Article 6(A)(8), the NRC believes that the latter is operative and therefore controlling. In particular, Article 6(A)(8) declares that "nothing in this compact shall be construed to affect the generation, treatment, storage, or disposal of waste generated by the atomic energy defense activities of the Secretary of the United States Department of Energy or federal research and development activities as defined in Public Law 96-573." (Emphasis added.) This provision is generally consistent with that of the Policy Act. The NRC believes that the U.S. Department of Energy is drafting a clarification of the term "federal research and development."

QUESTION 2. Do you believe that the 1986 date, after which Congressionally-approved compacts may exclude from their sites waste generated outside that region, should be altered in any way?

ANSWER.

No. The Commission agrees with the consensus expressed by the witnesses in various hearings before the Committee that the 1986 exclusion date is an important incentive for the States to form compacts and to find and operate sites as quickly as possible in those regions without sites.

QUESTION 3. A number of interested parties have raised the issue of what might happen in 1986 should Congressionally-approved compacts with disposal sites decide to exclude waste from regions which did not yet have sites on-line. Do you believe that this is an issue most appropriately resolved by Congress or by the States themselves through interregional agreements?

ANSWER.

Because the States have the responsibility to dispose of low-level radioactive waste under Public Law 96-573, the Commission believes that the States have the incentive, the responsibility and the capacity to resolve the issue through interregional agreements.

QUESTION 4. In light of the possibility that other regions may not have new sites on-line by 1986, what alternatives do you believe are available to siteless regions to handle, within their own region, the low-level waste which they generate? For example, a recent GAO study has suggested that the States might store low-level waste in centrally located, warehouse-type facilities until new sites are opened. Has the Nuclear Regulatory Commission encouraged this approach and offered to assist regions in pursuing such options?

ANSWER.

Alternatives that the Commission believes might become available to siteless regions to handle the low-level radioactive waste which they generate within their own regions are on-site storage for nuclear power stations and some other relatively large generators. For those generators that are serviced by brokers, some storage capability might be established. Also, various technologies for reducing the volume of low-level radioactive waste would be helpful, such as compaction and more careful management of waste generation. NRC has not encouraged the use of centrally located, warehouse-type facilities. Rather the Commission believes that immediate disposal in the sites that are already available is the most prudent approach. Accomplishing this objective may require interregional agreements as discussed in the answer to Question 3.

QUESTION 5. Is it your view that Congress should take action on the compacts now pending before it or should Congressional consent to any of the compacts be delayed until all compacts have been submitted to the Congress?

ANSWER.

The Commission believes that Congress should take action on the compacts now pending before it to encourage those regions that have not yet submitted compacts to do so quickly.

QUESTION 6. What is your understanding of the provisions of the Southeast Compact regarding disposal of Federal waste at the southeast regional facility? Do you believe its provisions to be generally consistent with those of the Policy Act?

ANSWER.

The Commission believes that the Southeast Compact is consistent with the Policy Act in this regard. See answer to Question 1.

QUESTION 7. Article 4 of the compact gives the Southeast Commission the authority to enter into agreements for the import of waste into the region and the export of waste generated within the region. Do you view this provision as banning export of waste except with approval of the Commission?

ANSWER.

No. Article 4(L) of the compact provides that the Commission may ban export of waste, but it must act affirmatively to do so. But even if the Commission does not ban export, other regions might prohibit import and thus no export from the Southeast region could actually take place. The provision in Article 4(e)(9) mentioned in the question refers to the Compact Commission's authority to make arrangements "for the right of access to facilities outside the region for waste generated within the region." Thus it appears to empower the Compact Commission to locate a disposal site for waste which the Commission would permit to be exported.

The matter of exporting waste is also discussed in our answer to Question 1.

QUESTION 8. Article 5, paragraph (B), of the Compact states in part the following:

> A host State may terminate or limit access to its regional facility if it determines that Congress has materially altered the conditions of this compact.

What, in your opinion, would be the legal effect of Congress giving its consent to such language?

ANSWER.

This provision resembles existing law. Until the compact becomes effective, the host State has the right to terminate or limit access to its disposal facility, so long as it does so in a manner not inconsistent with the Commerce Clause of the Constitution. Thereafter, access to the site would be governed by the terms of the compact. Although the law is unclear, if Congress sufficiently conditioned its consent to the compact, it appears that the States would have some right to reject the compact. Cf. Petty v. Tennessee-Missouri Bridge Commission, 359 U.S. 275, 281-82 & n.7 (1959). Whether this right is as extensive as the right of a host State under Article 5(B) to make a unilateral determination of a material change is open to question. If these rights are co-extensive and if terminating or limiting access is interpreted as a rejection of the compact, then Article 5(B) merely restates existing law.

Another interpretation is possible, however. The host State might determine that Congress had materially altered the compact, accept the compact, and claim the right under Article 5(B) to terminate or limit access to its facility in ways previously unavailable to the State. The host State might reason that, in approving this clause, Congress had arguably broadened the host State's authority to restrict access to its facility. Although we consider this interpretation unlikely, the purpose of the clause is not entirely clear. Congress may wish to state in the legislative history that a host State's authority under Article 5(B) does not exceed its authority under the other terms and conditions of the compact.

QUESTION 9. Do you view any of the provisions of the Southeast Compact as becoming effective prior to Congressional consent? If so, which provisions? What activities, if any, do you believe are appropriate for compact commissions to undertake prior to Congressional consent?

ANSWER.

The Low-Level Radioactive Waste Policy Act provides that compacts formed pursuant to it shall not become effective until Congress grants its consent. Section 4(a)(2)(B). This suggests that nothing in the low-level waste compacts could become effective without Congressional consent. However, States may, without Congressional consent, engage in any joint activity that does not tend to "the increase of political power in the States, which may encroach upon or interfere with the just supremacy of the United States." New Hampshire v. Maine, 426 U.S. 363, 369 (1976). Consistent with this limitation, the Southeast Compact Commission and the party States may take a number of actions under the compact. We believe that the States could choose Commission members, who could meet, adopt by-laws and other procedures for operation, discuss agreements with other States or regions for access to the Southeast regional facility, and take other steps to prepare for the duties and responsibilities of full operation of the compact.

QUESTION 10. Please comment with regard to the following issues which have arisen during discussions with the States regarding disposal of Federally-owned waste at regional facilities:

a. which Federal generators should have access to regional sites;

ANSWER.

The Commission believes that all Federal low-level radioactive waste generated within the party States to the Southeast Compact should be allowed continued access to the disposal site of the Southeast Compact with the exception of low-level radioactive waste from the atomic energy defense activities of the Secretary of the U.S. Department of Energy, or any successor thereto, as defined in the Low-Level Radioactive Waste Policy Act of 1980 (94 Stat. 3347), or Federal research and development activities. Under this formula, all Federal waste that presently is acceptable in commercial burial sites should continue to be acceptable after the compacts come into operation. The Commission believes consistency and uniformity with respect to the treatment of Federal waste in regional disposal sites is desirable. In this regard, the Commission understands that the U.S. Department of Energy on behalf of Federal generators of waste is preparing a clarification of the term "Federal research and development activities."

In addition, some compacts are concerned that if they follow the legislative language and exclude atomic energy defense waste only of DOE, and then through reorganization or other means such wastes become the responsibility of other agencies such as the Departments of Defense or Commerce, their exclusion would no longer be valid. We think that the compacts would not be so narrowly interpreted. However, these apprehensions, and the perceived necessity to broaden the language in the compacts to address all eventualities with respect to the agency generating such atomic energy defense wastes, might be alleviated if Congress were to make it clear that the exclusion applies to the atomic energy defense wastes of the Department of Energy or any successor thereto.

QUESTION. b. whether Federal generators should be allowed to store waste at other regional sites without permission of the region within which the waste was generated;

ANSWER.

The Commission believes that Federally-generated waste should be stored or disposed of at regional sites outside the region where the waste was generated only with permission of both the regional compact commission with authority over the receiving site and the compact commission with authority over the region in which the waste was generated. In this regard, however, we understand that the Defense Department may be addressing particular needs that it perceives may arise where disposal in regional sites other than the region where the waste is generated may be justified.

QUESTION. c. whether there should be a percentage limitation on the amount of Federal waste which may be disposed of at a regional facility;

ANSWER.

As long as the Federal waste is generated within the region, it should be permitted to be buried at the regional site. The Commission is not aware of any persuasive justification for a percentage limitation on Federal waste. However, for planning purposes, the compact commissions should be informed as soon as possible of any changes in the volume and composition of the waste by the Federal agency that generates the waste.

QUESTION. d. whether on-site inspection by the States of Federal generators should be allowed; and, if so, under what conditions;

ANSWER.

Agreements under section 274b. of the Atomic Energy Act do not provide Agreement States with authority over Federal facilities, and thus Agreement States may not inspect such facilities. However, the NRC intends to use a Memorandum of Understanding under section 274i. which would permit on-site inspection by States of NRC licensees that are commercial generators. The proposed Memorandum of Understanding provides that States may not inspect or otherwise enter the premises of any Federal licensee of the NRC without the licensee's prior consent. The NRC believes that each Federal agency should be able to decide for itself whether, to what extent, and under what conditions it would allow on-site State inspection of waste packages and transport vehicles at its facilities.

QUESTION. e. whether Federal generators should be subject to the same regulations, requirements, fees, etc., that are applicable to commercial generators.

ANSWER.

Currently, Federal generators who use commercial facilities are subject to the same burial requirements imposed by these facilities that are applicable to commercial generators. The Commission sees no reason to change this relationship. The Commission understands that Federal agencies that generate waste may be commenting on the question of authority to pay fees established by State bodies, as well as the degree to which other Federal and State regulations should apply to such waste.

QUESTION 11. Do you believe that the provisions of the Southeast Compact are sufficient to clarify that the compact is not intended to alter the existing Federal/State regulatory framework for transportation and disposal of low-level waste?

ANSWER.

Yes. Articles 6(A)(1) and (2) appear to preserve existing NRC and Agreement State authority, jurisdiction, and discretion. In addition, nothing in the compact appears to confer any new authority on the compact Commission or the States to regulate the packaging or transportation of radioactive wastes in a manner inconsistent with NRC or DOT regulations, to regulate health, safety, or environmental hazards from source, byproduct, or special nuclear material, or to inspect the activities of NRC licensees, as some of the other compacts appeared to..

QUESTION 12. Do you have any concerns with regard to any of the definitions contained in Article 2 of the compact?

ANSWER.

Only a limited concern as expressed in the last section of the answer to Question 1.

The CHAIRMAN. Now our last panel is Mr. David Ebenhack, vice president for regulatory affairs, Chem-Nuclear Systems, Columbia, S.C.; and Don Fowler, consultant to Chem-Nuclear Systems, Columbia, S.C.

Are you Dr. Ebenhack or Mr. Ebenhack?

Mr. EBENHACK. I'm mister.

The CHAIRMAN. We will be glad to hear you both and will give you 5 minutes each. Then we may want to submit some questions for the record, if that's agreeable. You may proceed now.

PANEL CONSISTING OF DAVID EBENHACK, VICE PRESIDENT FOR REGULATORY AFFAIRS AND DON FOWLER, CONSULTANT, BOTH OF CHEM-NUCLEAR SYSTEMS, INC., SOUTH CAROLINA

Mr. EBENHACK. We are particularly grateful for the invitation by Hon. Senator Strom Thurmond to testify today before the members of the Committee on the Judiciary.

Chem-Nuclear Systems, Inc., has favored regionalizing the management of low-level radioactive waste for a number of years. And we continue to do so.

Chem-Nuclear supported the Waste Policy Act adopted by the Congress in 1980, which authorized the formation of the Southeast Compact. We believe the basic policy embodied in that legislation is sound in terms of both efficient management and public equity.

Since the 1980 Waste Policy Act was adopted, Chem-Nuclear has actively encouraged and supported prompt action by the States in forming regional groupings of States, and drafting compacts for legislative adoption. Progress has been slow but sure.

To those who negotiated the Southeast Compact and the legislative and executive officials in the varius southern States who supported it and were instrumental in its adoption, we extend our appreciation and congratulations.

Chem-Nuclear supports the proposed Southeast Compact and encourages the subcommittee to seek prompt action by the full Committee on the Judiciary and the Senate itself at the earliest possible time.

We, at Chem-Nuclear, are continuously reminded that the management of low-level radioactive waste is controversial and politically sensitive. It is clear that our point of view is different than others, and we do not seek to debate these questions. But we would like to state emphatically that the Barnwell low-level redioactive waste disposal facility, in the 11 years in which Chem-Nuclear has operated it, has established a standard of excellence for the industry that is unsurpassed anywhere in this country and indeed in the world.

While other low-level sites have had difficulties, Chem-Nuclear's record of protecting the environment and operating a safe site is excellent. Chem-Nuclear is committed to operating in a manner that protects public safety and the environment. We are particularly proud of our record and intend to operate in the future with the same standards of excellence.

With respect to the specific provisions of the compact, there are several that we would like to address: First, one provision of the compact in effect states that the Barnwell site will not be a regional facility after 1992. Chem-Nuclear did not favor this cutoff date during the time the compact was being negotiated. However, with this date in mind, we have made a number of evaluations as to the capacity of the site. There is ample disposal capacity currently under license at the site to dispose of all wastes that will be generated and disposed of under the current conditions of our license.

Second, we are pleased with the compact provision requiring that the regulation of regional sites, including the Barnwell site, will be exercised by the host State, and not by an agency or entity established by the compact commission.

Third, we are of the opinion that the commission's activities should be limited to those required to meet its specific obligations under the provisions of the compact.

Fourth, we applaud the provision that requires all member States to remove all laws and other legal restrictions that would prevent them from being a host State. At least in contemplation of the law, all States should come to the compact as equals.

Fifth, we concur in the goals and timetables established in the compact for identifying the next host State. We believe the timetable for siting a new facility is essential to meet the mandatory startup date for the next regional facility.

A word of caution on this point: Siting new waste facilities is a difficult task. The difficulty is not in finding a suitable site; it is in mustering the sociopolitical support to see the process through. Even though 1992 might seem distant, we would suggest that it will take persistence, determination, and dedication to meet the compact schedule.

Sixth, we approve the discretionary authority given to the compact commission to prohibit exporting wastes from the region. Such a prohibition will assure that wastes are managed on a regional basis.

In summary, Chem-Nuclear is of the opinion that the advantages of adopting the compact far outweigh the consequences of not adopting it. We are not alone in our opinion as negotiators from eight States have approved compacts. Legislators from seven States have adopted it, and the eighth State (Georgia) is expected to do so in early 1984.

We urge the committee to act favorably on the southeast compact and to recommend ratification to the Senate. We look forward to full implementation of the Waste Policy Act of 1980.

Thank you for your courtesy and attention.

The CHAIRMAN. One of the witnesses who testified this morning raised a question here that I would like to ask: Does Chem-Nuclear contemplate any efforts to keep the Barnwell site open beyond the 1992 closure date provided in the Southeast Compact?

Mr. EBENHACK. We very much go by the rules and regulations of the State as well as the country, and that is the legislation, Senator. It does specify regional siting, and I'm sure Chem-Nuclear would be willing to operate the site that the State of South Carolina so deemed just for themselves, but at the moment, we fully plan on implementing the dates as outlined in the legislation.

The CHAIRMAN. Chem-Nuclear systems recently merged with Waste Management, Inc., I believe. Is that correct?

Mr. EBENHACK. Correct.

The CHAIRMAN. I am informed that this merger has aroused a great deal of concern in this State. What changes in management have been made; and what effect has the merger had, or will it have, on the facility's operations?

Mr. EBENHACK. The changes in the management, the people who operate Chem-Nuclear and have operated it in the past, are still the people who operate it today. We were purchased by Waste Management; we are a subsidiary wholly operated under the same procedures, same policy, and same guidelines as we always have.

There have been a few changes in management, but nothing more than normal changes that result over time within a company as people receive better offers to go to other places and that sort of thing, and they're being replaced by equally qualified——

The CHAIRMAN. You don't feel there has been any relaxation of protection of public health and safety and caution——

Mr. EBENHACK. Not at all.

The CHAIRMAN [continuing]. On the part of Waste Management?

Mr. EBENHACK. No, sir. Not at all. If anything, more emphatic than ever in maintaining their reputation and building upon it.

The CHAIRMAN. We may have some other questions that we will submit for you to answer for the record if that's agreeable.

We thank you very much for your appearance here and if we have questions for the record, we will submit them to you to answer.

Mr. FOWLER. I would like to express to you and your committee and to thank you for the cooperation they have shown to us. It's been exemplary, and we do appreciate it.

I would also like to note, sir, that the president of Chem-Nuclear Michael Jump, is with us and vice president, Michael Cole, is also here to express their interest and support for the Southeastern compact.

The CHAIRMAN. Do they care to say anything?

Mr. FOWLER. No, sir. Mr. Ebenhack——

The CHAIRMAN. You're speaking for them. Thank you very much. Does anyone else have anything to say on this subject in the closing minutes? We're about to wind up.

I might say that there are several statements here that are to be placed in the record: Carolina Power & Light Co.; South Carolina Electric & Gas; the College of Nuclear Physicians; U.S. Ecology; and the Kershaw County Safe Energy Project. U.S. Ecology, I believe, operates the other two sites, the one in Washington State and the one in Nevada.

I think that completes our hearing now. I wish to express my appreciation to all to have attended for your patience, careful attention, and good behavior.

Are there any members of the South Carolina Legislature here? If so, I would like to introduce them. There were some here; but they got away, I think, before I knew they were here.

Again, we thank the Governor. Thank all of you witnesses for coming. We appreciate your testimony and we assure you that it will be given the most careful consideration.

Thank you very much.

[Whereupon the meeting was adjourned at 12:55 p.m., subject to the call of the Chair.]

APPENDIX

DUKE POWER COMPANY
P. O. Box 33189
Charlotte, N. C. 28242

WILLIAM S. LEE
CHAIRMAN OF THE BOARD &
CHIEF EXECUTIVE OFFICER
(704) 373-4083

DOUGLAS W. BOOTH
PRESIDENT &
CHIEF OPERATING OFFICER
(704) 373-4702

August 25, 1983

The Honorable Strom Thurmond
Chairman, Committee on the Judiciary
United States Senate
Washington, D. C. 20510

RE: S. 1749 - A Bill to Grant Consent to the Southeast Interstate Low-Level Radioactive Waste Management Compact

Dear Senator Thurmond:

Duke Power Company supports Senate Bill No. 1749 and believes that its timely enactment would be in the best interest of our consumers, the member states of the Southeast Compact, and the country at large.

With the passage of the Low-Level Radioactive Waste Policy Act of 1980, Congress made it clear that it is the responsibility of individual states to dispose of their low-level nuclear waste. In addition, this legislation encouraged states to enter into Interstate compacts for the management and disposal of low-level nuclear waste on a regional basis. We support this approach and believe it provides the most practical and economic means for assuring that the nation's low-level nuclear waste is disposed of in an environmentally sound and safe manner close to where it is generated without imposing an undue burden on any individual state.

As the regional compacting process continues, there should be gradual and significant improvements over the current system whereby only three sites in Richland, Washington; Barnwell, South Carolina; and Beatty, Nevada serve as disposal facilities for the entire nation's low-level nuclear waste. Once a sufficient number of interstate compacts are in place, it is anticipated that any unresolved issues regarding available disposal space beyond 1986 can be addressed on an interregional basis.

Congressional consent for the Southeast Compact affects not only the nuclear generation of electricity but also the management of low-level nuclear waste generated in medical, educational, and industrial activities as well. We urge the Committee to report favorably Senate Bill 1749 for its early adoption by the full Senate.

There are, of course, reduced burdens on a host disposal facility if generators of low-level waste take reasonable steps to minimize the amounts of waste generated. In this connection, we would note that Duke Power Company has an aggressive program of volume reduction of low-level waste that covers the spectrum from management control procedures for prevention of waste generation to our commitment to spend in excess of $100 million for volume reducing equipment at our Oconee Nuclear Station.

We appreciate the opportunity to provide you with our comments on this important legislation.

Sincerely yours,

Douglas W Booth
D. W. Booth

US Ecology, Inc.
9200 Shelbyville Road, Suite 300
P.O. Box 7246
Louisville, Kentucky 40207
502 426-7160

USEcology

August 31, 1983

The Honorable Strom Thurmond
Chairman, Committee on the Judiciary
1835 Assembly Street, Room 1558
Columbia, South Carolina 29202

Dear Senator Thurmond:

I have been advised that because of the number of witnesses scheduled to appear before your Committee on September 6, 1983 in Columbia, South Carolina, you are not in a position to approve my request to testify on S. 1749, a bill to grant the Consent of Congress to the Southeast Interstate Low-Level Radioactive Waste Compact. In lieu thereof, and at the suggestion of the Committee staff, I am pleased to submit the comments of US Ecology, Inc. on S. 1749 and request that they be included as part of the record in these proceedings.

As President of US Ecology, Inc., a company that operates two of the three commercial low-level radioactive waste disposal sites in the country, one near Beatty, Nevada, and the other on the Department of Energy's Hanford Reservation in the State of Washington, I wish to express our full support of the concept of regional compacts for the disposal of low-level radioactive waste.

As you know, the compact program came into being when Congress passed the Low-Level Radioactive Waste Policy Act of 1980 giving the states the responsibility for disposing of low-level radioactive waste, and encouraging them to form interstate compacts and construct regional facilities. We too wish to encourage as well as to assure that regional compacts are established in a manner consistent with the Low-Level Radioactive Waste Policy Act so that they will facilitate the handling, transportation and disposal of the low-level wastes in a safe and cost efficient manner.

My comments will focus on the provisions of S. 1749 and will cover, as well, our concerns relating to the other compacts presently before your committee for concurrence.

At the outset I would like to commend the states that make up the Southeast Region for their initiative in forming a compact and submitting it to the Congress for approval. However, there are three provisions in the Southeast Compact that I believe represent impediments to an effective national disposal program and I would like to comment thereon.

Management v. Disposal

Our first area of concern is the scope of the Compact. The Low-Level Radioactive Waste Policy Act permits the states to enter into compacts to provide for the establishment and operation of regional disposal sites in contrast to the more broadly stated policy found in S. 1749 for the management of low-level radioactive waste. We believe that Congress only intended compacts to provide for the disposal of low-level waste and by the use of language which would provide for the management of low-level waste, the states in the Southeast Compact are assuming an authority not conferred upon them by the Act. We believe that existing federal and state regulations are already adequate to properly manage low-level waste generation. Thus, the intent of the Congress with respect to disposal versus management should be made clear either in the legislative history of S. 1749 or in the consent language approving the Compact.

Export

The second issue of concern to us is the provision in the Southeast Compact which would permit the Commission to prohibit the exportation of waste from the region after January 1, 1986, [Article 4 (L)]. The Low-Level Radioactive Waste Policy Act allows states to restrict only the import of out-of-region waste for disposal in a regional site. While one can understand the economic motives behind this provision, the restriction goes beyond the terms of the Act, and may be construed as an unauthorized and unconstitutional burden on interstate commerce.

Limit on Access

Finally, the Southeast Compact provides that a host state may terminate or limit access to its regional facility if it determines that Congress has materially altered the conditions of the Compact [Article 5 (B)]. In short, the Commission would have the authority to override Congress after Congress has considered the Southeast Compact. By such action the consent process would clearly be nullified. We believe that this was not the intent of Congress when the Low-Level Radioactive Waste Policy Act was enacted into law and recommend that this section be deleted from the terms of the Compact.

Northwest and Central States

While the major focus of the September 6 hearing is on the Southeast Compact, we, as well as others, are concerned with a number of common issues found in the other compacts now before your committee. Accordingly, we would like to take a few minutes to reemphasize those concerns.

Exclusion of Waste After July 1, 1983

The Low-Level Radioactive Waste Policy Act provides that a compact region may not exclude the use of a regional waste site prior to January 1, 1986. The Northwest Compact, however, provides for a July 1, 1983, exclusion date and, while the consent language in S. 247 changed the July 1, 1983 date to January 1, 1986, it is not sufficient to cure another serious deviation from the intent of the Congress in establishing the January, 1986 date.

Restrictive Provisions Effective Prior to January 1, 1986

US Ecology's Hanford site presently receives 52 percent[1] of the Nation's low-level radioactive waste, yet the Northwest Compact would not allow a party state, even prior to January 1, 1986, to accept low-level radioactive waste generated in a non-party state unless an official of the non-party state executes a certificate of compliance stating that the shipment has been inspected and found to be in compliance with applicable federal and state packaging regulations and regulations of the host state. This would require individual inspection of each shipment of waste by the non-party state of origin and the immediate hiring of additional state inspectors and would result in costly and unnecessary duplication of existing NRC and DOT regulatory programs. More importantly, the certificates of compliance would also require the non-party state of origin to enter into a binding agreement to idemnify any party state for liability or expense resulting from accidental releases [Article IV (3) (D)]. While the Northwest Compact distinguishes, prior to 1986, between waste generated in party and non-party states, the acutal waste constituents are virtually the same. Further, many states have constitutional prohibitions against providing such indemnification and such a requirement is unnecessary due to existing insurance coverage (e.g., All waste generators who ship to US Ecology's Hanford site are already required by Washington State law to indemnify and save harmless that state in an amount up to $5,000,000[2]). These provisions of the Compact providing for (1) the 100 percent inspection and (2) the indemnity requirements, if unchanged by Congress, would operate immediately upon Consent to effectively prohibit the receipt of waste at Hanford from generators in non-party states and accordingly this provision should be deleted from the Northwest Compact. The adoption of this provision will therefore result in disruption of the national system of low-level radioactive waste disposal well in advance of January 1, 1986, and the development of any new disposal sites.

---

[1] Atomic Industrial Forum, Inc. "Low-Level Waste Mangement Program National Status Report," August 5, 1983.

Definition of Low-Level Radioactive Waste

(1) The definition of low-level radioactive waste as contained in the Northwest Compact is not consistent with the definition in the Low-Level Radioactive Waste Policy Act. We believe that it is essential in a comprehensive national regulatory scheme to use well understood and consistent definitions. Congress has formulated a sound definition of low-level nuclear waste in the Low-Level Radioactive Waste Policy Act, which would permit the low-level nuclear waste disposal program to keep pace with changing federal regulatory considerations, provide inter-regional consistency, and ensure disposal of all forms of low-level nuclear waste. The drafters of the Southeast Compact are to be congratulated for adopting the definition found in the Low-Level Radioactive Waste Policy Act and we urge that it be a mandatory requirement for all the compacts.

Limiting Waste

(2) On the issue of limiting the types of waste of which a host state may dispose, nothing in the language of any of the compacts should be interpreted as permitting the imposition of any limitations on the acceptance of low-level radioactive waste based upon the types of activities which generated the waste. This should be made clear so long as the waste complies with all presently applicable regulatory requirements. For example, a host state which is also a non-reactor state could decide to restrict burial to non-reactor waste or impose some other similar restrictions apparently without discussion with the other party states. This type of authority is contained within the Northwest Compact [Art. IV (5)] and should be deleted.

Defense Waste

(3) The Low-Level Radioactive Waste Policy Act excludes from its provisions waste generated as a result of defense activities of the Secretary of Energy or Federal research and development activities.[3] But other Federal Government activities, including some facilities of the Defense, Agriculture, Veterans Administration, and Environmental Protection agencies generate low-level radioactive waste. These facilities have NRC or Agreement State licenses and routinely ship low-level radioactive waste to commercial facilities for disposal. In our judgment, it was not the intent of the Act to alter this practice. We believe Congress should modify the exclusion contained in the Act to assure that other Federal Government activities unrelated to weapons research and development are provided for in the state compacts.

---

[2] Copy of current Low-Level Radioactive Waste Shipment Certification for Commercial Generators/Packagers and Brokers and Carriers, attached as Attachment "A".

[3] NOTE: This waste is currently disposed of at commercial low-level radioactive waste sites such as those operated by US Ecology, Inc.

Packaging and Transportation

(4) The Northwest Compact requires each party state to adopt the packaging and transportation regulations of the host state (Article III). States properly have a role in the regulation of packaging and transportation activities to the extent that such regulations are consistent and compatible with federal requirements. However, variations in packaging and transportation standards could result in a cumbersome system of inter-regional requirements, which would place an unnecessary burden on waste generators and shippers by rendering compliance more difficult and could jeopardize the safe and efficient movement of low-level nuclear waste throughout the country. Accordingly, we recommend that packaging and transportation standards be in accordance with DOT and NRC regulations.

NRC Licensees

(5) The Northwest Compact provides for the periodic unannounced inspection of the premises of NRC licensees and the waste management activities thereon. Currently such licensees are subject only to federal inspection with respect to activities carried out under NRC licenses and federal regulations. This provision should be deleted from the Northwest Compact. In lieu thereof, an accommodation could be made for an inspection program though a Memorandum of Understanding between the federal and state agencies.

POST January 1, 1986

It is inevitable that the Midwest, Northeast and Central Compact states will not have sites in operation by January 1, 1986. It takes three to five years to site and license a waste disposal facility and, in a given case, it could take much longer. Consequently, in order that the nation's low-level radioactive waste may be properly disposed of, all compacts receiving Congressional approval should expressly provide that after January 1, 1986, the compact states will continue to provide free and open access by the host facility to any non-party state which has neither a disposal facility or adequate storage facilities so long as the non-party state demonstrates ascertainable progress towards the establishment of either a state or regional facility. The non-party state should be allowed to demonstrate to the host state that the volume of waste proposed to be sent has been reduced through such procedures as compaction or incineration; that the use of on-site storage practices of waste generated within the requesting region has been utilized to a reasonable extent and that the requesting region is making a reasonable effort to site a new facility.

Conclusion

In conclusion, it is our hope that before the committee approves any regional compact provided for by the Low-Level Radioactive Waste Policy Act, that a resolution of the major issues being brought to your attention by this letter will be effected in all of the compacts currently before Congress. We believe that the resolution of these issues is a critical step in the process of assuring that all of the nation's low-level nuclear waste is disposed of in a safe, efficient, and environmentally sound manner. These goals can be accomplished, in our opinion, if the Congress in its consent language will modify the Southeast Compact in a manner consistent with the views expressed herein. Should that be done, the Southeast Compact can then be used as a model for subsequent compacts awaiting your review and approval.

It is my understanding that the Committee on the Judiciary may hold a subsequent hearing on the compacts now before, or likely to come before the Committee for approval, this fall. Should this be the case, I respectfully request that US Ecology, Inc. be given the opportunity to participate in such a hearing in order to present its views on this all-important subject.

Sincerely yours,

JJ Scoville

J. J. Scoville
President

JJS/sw

Attachment "A" (1)

LOW-LEVEL RADIOACTIVE WASTE SHIPMENT CERTIFICATION FOR COMMERCIAL GENERATOR/PACKAGERS, AND BROKERS AND CARRIERS

The following certification, completed as applicable, is made to the State of Washington:

Certification is hereby made to the State of Washington that Radiation Shipment Record No.__________ of low-level radio-active waste has been inspected in accordance with requirements of the Governor of Washington's Executive Order dated November 19, 1979, prior to its shipment. Further certification is made that the inspection has revealed no items of non-compliance with all applicable laws, rules and regulations.

The undersigned shall indemnify and hold harmless the State of Washington, in an amount not to exceed $1,000,000.00 per individual who may be injured, provided that indemnification shall not exceed $5,000,000.00 in total, for each occurrence, from any and all claims, suits, losses, damage, injury and expenses to any person whomsoever or to property arising or growing out of or in any manner connected with the activities performed under this order.

Except for any violation of applicable existing state or federal statute or regulation respecting packaging and shipment, inspection and acceptance of any item, or container or material covered by this certification by the State of Washington or a duly authorized contractor shall release the party who executed this certificate from any and all requirement of indemnification from injury or loss.

SECTION A:
FOR THE GENERATOR/PACKAGER: ______________________________
(Company Name)

PERMIT NUMBER: ____________________

VOLUME OF WASTE IN THIS SHIPMENT: ____________________

DATE: ____________________ BY: ____________________

TITLE: ____________________

SECTION B:
FOR THE BROKER: ______________________________
(Company Name)

PERMIT NUMBER: ____________________

VOLUME OF WASTE IN THIS SHIPMENT: ____________________

DATE: ____________________ BY: ____________________

TITLE: ____________________

SECTION C:
FOR THE CARRIER: ______________________________
(Company Name)

VOLUME OF WASTE IN THIS SHIPMENT: ____________________

DATE: ____________________ BY: ____________________

TITLE: ____________________

DSHS RHF-31A
DSHS 13-436 (4/80)

Attachment "A" (2)

LOW-LEVEL RADIOACTIVE WASTE SHIPMENT CERTIFICATION FOR GOVERNMENTAL GENERATOR/PACKAGERS, AND BROKERS AND CARRIERS

The following certification, completed as applicable, is made to the State of Washington:

Certification is hereby made to the State of Washington that Radiation Shipment Record No. __________ of low-level radio-active waste has been inspected in accordance with requirements of the Governor of Washington's Executive Order dated November 19, 1979, prior to its shipment. Further certification is made that the inspection has revealed no items of non-compliance with all applicable laws, rules and regulations.

The undersigned agency of a state or the federal government shall indemnify and hold harmless the State of Washington from any and all claims, suits, losses, charges and expenses on account of injuries to any and all persons whomsoever, and any and all property damage arising or growing out of or in any manner connected with the activities performed under this order; provided that: (1) in the event that a state or the federal government has to pay for any loss under the previous clause, such indemnification shall not exceed $1,000,000.00 per individual who may be injured; provided total indemnification shall not exceed $5,000,000.00 or indemnification shall not exceed monies available from appropriated funds of the government at the time of the injury or loss, whichever is greater; provided further, that nothing in this certification will be considered as implying that the legislative body will, at a date later than the injury or loss, appropriate sufficient funds to meet any deficiency of funds at the time of injury or loss.

Except for any violation of applicable existing state or federal statute or regulation respecting packaging and shipment, inspection and acceptance of any item or container or material covered by this certificate by the State of Washington or a duly authorized contractor shall release the party who executed this certificate from any and all requirement of indemnification from injury or loss.

SECTION A:
FOR THE GENERATOR/PACKAGER: ______________________________
(Company Name)

PERMIT NUMBER: ______________________

VOLUME OF WASTE IN THIS SHIPMENT: ______________________________

DATE: ______________________ **BY:** ______________________________

TITLE: ______________________________

Certification is hereby made to the State of Washington that Radiation Shipment Record No. __________ of low-level radio-active waste has been inspected in accordance with requirements of the Governor of Washington's Executive Order dated November 19, 1979, prior to its shipment. Further certification is made that the inspection have revealed no items of non-compliance with all applicable laws, rules and regulations.

The undersigned shall indemnify and hold harmless the State of Washington, in an amount not to exceed $1,000,000.00 per individual who may be injured, provided that indemnification shall not exceed $5,000,000.00 in total, for each occurrence, from any and all claims, suits, losses, damage, injury and expenses to any person whomsoever or to property arising or growing out of or in any manner connected with the activities performed under this order.

Except for any violation of applicable existing state or federal statute or regulation respecting packaging and shipment, inspection and acceptance of any item, or container or material covered by this certification by the State of Washington or a duly authorized contractor shall release the party who executed this certificate from any and all requirement of indemnification from injury or loss.

SECTION B:
FOR THE BROKER: ______________________________
(Company Name)

PERMIT NUMBER: ______________________

VOLUME OF WASTE IN THIS SHIPMENT: ______________________________

DATE: ______________________ **BY:** ______________________________

TITLE: ______________________________

SECTION C:
FOR THE CARRIER: ______________________________
(Company Name)

VOLUME OF WASTE IN THIS SHIPMENT: ______________________________

DATE: ______________________ **BY:** ______________________________

TITLE: ______________________________

DSHS RHF-31B
DSHS 13-424A (4/80)

Attachment "A" (3)

LOW-LEVEL RADIOACTIVE WASTE SHIPMENT CERTIFICATION FOR THE FEDERAL GOVERNMENT AS A GENERATOR/PACKAGER, AND ITS BROKERS AND CARRIERS

The following certification, completed as applicable, is made to the State of Washington:

Certification is hereby made to the State of Washington that Radiation Shipment Record No. __________ of low-level radioactive waste has been inspected in accordance with requirements of the Governor of Washington's Executive Order dated November 19, 1979, prior to its shipment. Further certification is made that the inspection has revealed no items of non-compliance with all applicable laws, rules and regulations.

As determined under the provisions of the Federal Tort Claims Act (28 USC § 2671-2680), the undersigned shall be liable for and hold harmless the State of Washington from any and all claims, suits, losses, damages or expenses on account of injuries to any and all persons whomsoever, and any and all property damage, arising or growing out of or in any manner connected with any activities performed under this order.

Except for any violation of applicable existing state or federal statute or regulation respecting packaging and shipment, inspection and acceptance of any item or container or material covered by this certification by the State of Washington or a duly authorized contractor shall release the party who executed this certificate from any and all requirement of indemnification from injury or loss.

SECTION A:
FOR THE GENERATOR/PACKAGER: ______________________________
(Company Name)

PERMIT NUMBER: ____________________

VOLUME OF WASTE IN THIS SHIPMENT: ______________________________

DATE: ____________________ BY: ______________________________

TITLE: ______________________________

Certification is hereby made to the State of Washington that Radiation Shipment Record No. __________ of low-level radioactive waste has been inspected in accordance with requirements of the Governor of Washington's Executive Order dated November 19, 1979, prior to its shipment. Further certification is made that the inspection have revealed no items of non-compliance with all applicable laws, rules and regulations.

The undersigned shall indemnify and hold harmless the State of Washington, in an amount not to exceed $1,000,000.00 per individual who may be injured, provided that indemnification shall not exceed $5,000,000.00 in total, for each occurrence, from any and all claims, suits, losses, damage, injury and expenses to any person whomsoever or to property arising or growing out of or in any manner connected with the activities performed under this order.

Except for any violation of applicable existing state or federal statute or regulation respecting packaging and shipment, inspection and acceptance of any item, or container or material covered by this certification by the State of Washington or a duly authorized contractor shall release the party who executed this certificate from any and all requirement of indemnification from injury or loss.

SECTION B:
FOR THE BROKER: ______________________________
(Company Name)

PERMIT NUMBER: ____________________

VOLUME OF WASTE IN THIS SHIPMENT: ______________________________

DATE: ____________________ BY: ______________________________

TITLE: ______________________________

SECTION C:
FOR THE CARRIER: ______________________________
(Company Name)

VOLUME OF WASTE IN THIS SHIPMENT: ______________________________

DATE: ____________________ BY: ______________________________

TITLE: ______________________________

DSHS RHF-21-C
DSHS 13-434B

SOUTH CAROLINA ELECTRIC & GAS COMPANY
POST OFFICE BOX 764
COLUMBIA, SOUTH CAROLINA 29218

PATRICIA T. MARCOTSIS
VICE PRESIDENT GOVERNMENTAL
AND REGULATORY AFFAIRS

September 1, 1983

The Honorable J. Strom Thurmond
Chairman, Committee on the Judiciary
United States Senate
224 Dirkson Senate Office Building
Washington, D. C. 20510

Attention: Ms. Sally Rogers

Re: Southeast Interstate Low-Level
Radioactive Waste Management Compact
Senate Bill S.1749

Dear Senator Thurmond:

On behalf of South Carolina Electric & Gas Company, I am pleased to have this opportunity to provide this statement of support for the prompt passage of Senate Bill S.1749 to grant Congressional consent to the Southeast Interstate Low-level Radioactive Waste Management Compact.

As you are well aware, the path to development of a workable plan to solve the country's low-level nuclear waste disposal dilemma has been fraught with difficulty. Nevertheless, in the face of that difficulty, many diverse groups have, for the sake of the common good, agreed upon a framework within which this problem may be addressed. To be sure, the various interstate compacts which have been or will be finally approved may have between them some differences which require study and possible compromise. These are matters which can be resolved through inter-regional compact agreements or some other yet undefined compromise mechanism. However, in order for those efforts to proceed, the individual Compacts must come into existence in a real and legal sense so that the focus of each regional Compact may be less introspective and more in the direction of solving inter-regional differences.

Thank you for the opportunity to provide you with these comments. We certainly recognize that without your strong leadership the nation would not be as far along the road toward a solution to this problem as it now is. We owe you a debt of appreciation.

Very truly yours,

Patricia T. Marcotsis

Patricia T. Marcotsis

PTM:esp

COMMENTS OF
THE KERSHAW COUNTY SAFE ENERGY PROJECT
REGARDING
THE SOUTHEASTERN LOW LEVEL RADIOACTIVE WASTE COMPACT
TO BE ENTERED INTO THE RECORD OF THE
SENATE JUDICIARY COMMITTEE

SEPTEMBER 6, 1983

KERSHAW COUNTY SAFE ENERGY PROJECT
1115 WOODLAWN DRIVE ● CAMDEN, S.C. 29020 ● (803) 432-3872

MY NAME IS PEGGY OGBURN. I AM REPRESENTING THE KERSHAW COUNTY SAFE ENERGY PROJECT, A CITIZENS' COMMITTEE PROMOTING SAFE ENERGY EDUCATION AND ACTION.

FOR THE PAST YEAR WE HAVE ENDEAVORED TO RAISE PUBLIC AWARENESS IN OUR COMMUNITY AND THE SURROUNDING AREA REGARDING VARIOUS ENERGY ISSUES, INCLUDING NUCLEAR WASTE TRANSPORTATION AND STORAGE IN SOUTH CAROLINA. HUNDREDS OF OUR COUNTY'S CITIZENS HAVE EXPRESSED THEIR CONCERN THAT OUR STATE HAS ASSUMED AN UNEQUAL SHARE OF THE BURDEN OF DISPOSAL OF OUR NATION'S RADIOACTIVE WASTE. THE CITIZENS OF KERSHAW COUNTY DO NOT WANT OUR STATE TO SERVE AS A RADIOACTIVE GARBAGE DUMP FOR THE REST OF OUR NATION. WE APPLAUD THE POSITIVE STEPS WHICH OUR ELECTED OFFICIALS HAVE RECENTLY TAKEN TO DIMINISH OUR BURDEN IN THAT RESPECT.

WE URGE THE U.S. CONGRESS TO RATIFY THE WASTE COMPACT BILL AS AMENDED. WE ENCOURAGE OUR ELECTED OFFICIALS TO STAND FIRM AGAINST ALLOWING ANY MORE NUCLEAR WASTE FROM STATES OUTSIDE OF THE REGIONAL COMPACT TO ENTER SOUTH CAROLINA AFTER 1986. WE CALL UPON THE STATE OF SC TO WITHDRAW FROM THE COMPACT IN THE EVENT THAT ANOTHER HOST SITE HAS NOT BEEN DESIGNATED BY JULY 1, 1986.

IN FEBRUARY, A DELEGATION OF SOUTH CAROLINIANS PRESENTED PETITIONS TO SECRETARY OF ENERGY HODEL OPPOSING NUCLEAR WASTE IMPORTATION INTO OUR STATE. THE KERSHAW COUNTY SAFE ENERGY PROJECT WAS REPRESENTED IN THE DELEGATION. AT THAT TIME, WE WERE ASSURED BY THE SECRETARY OF ENERGY, AND BY REPRESENTATIVES OF OUR SENATE AND CONGRESSIONAL OFFICES, THAT OUR ELECTED OFFICIALS WERE DOING EVERYTHING POSSIBLE TO PROTECT THE INTERESTS OF OUR CITIZENS IN THIS MATTER. WE CHALLENGE YOU TO LIVE UP TO THIS CLAIM AND PROTECT OUR VITAL INTERESTS AS CITIZENS OF THIS STATE.

ACNP
American
College of
Nuclear
Physicians

1101 Connecticut Avenue, N.W., • Suite 700 • Washington, D.C. 20036
202-857-1100

SNM
The Society
of Nuclear
Medicine

STATEMENT FOR THE RECORD
OF THE
UNITED STATES SENATE COMMITTEE ON THE JUDICIARY
HEARING ON S. 1749

A Bill to grant the consent of the Congress to
the Southeast Interstate Low-Level Radioactive
Waste Management Compact

STATE HOUSE
COLUMBIA, SOUTH CAROLINA

September 6, 1983

PRESENTED BY:

Ralph G Robinson
Ralph G. Robinson, M.D.
President
American College of Nuclear
Physicians

Merle K. Loken
Merle K. Loken, M.D., Ph.D.
President
The Society of Nuclear
Medicine

The Society of Nuclear Medicine (SNM) and the American College of Nuclear Physicians (ACNP) are pleased to submit the following statement in support of S. 1749, a Bill to grant the consent of the Congress to the Southeast Interstate Low-Level Radioactive Waste Management Compact. The Society and the College, with a combined total membership approximating 12,000, represent the great majority of physicians, scientists, nuclear pharmacists, and technologists who are engaged in the practice of nuclear medicine in the Nation's medical centers, hospitals, and clinics. Our support of the low-level radioactive waste (LLW) compacting process is a normal progression from our earlier efforts in bringing national attention to the LLW disposal issues, which led ultimately to the enactment of P.L. 96-573, the Low-Level Radioactive Waste Policy Act on December 22, 1980, in the waning moments of the 96th Congress. We continue to support very strongly the provisions of P.L. 96-573, because we are convinced that this statute sets forth the safest, most rational and equitable approach to the proper management of the Nation's low-level radioactive waste.

The introduction of S. 1749 is quite timely and extremely important, for the region to be served by the Southeast Interstate Low-Level Radioactive Waste Management Compact generated 33.5% of the total National volume of LLW in 1982, as recorded by a contractor of the U. S. Department of Energy (EG&G Idaho). In addition, one of the party states of this Compact (South Carolina) also hosts 1 of the 3 existing LLW shallow land burial facilities, a facility which accepted 46% of the total National LLW in 1982; in previous years, the Barnwell, SC facility had been accepting approximately 80% of the total National volume. Not only do these data reveal an inequitable distribution of responsibility for LLW disposal, when one considers that more than 70% of the total National LLW volume is generated by States located East of the Mississippi River, the need for an additional shallow land disposal facility, beyond that offered by the Southeast Compact, cannot go unnoticed.

In addition, we support the emphasis given in the Southeast Compact to the concept of LLW management, not only in its name, but also in Article 2,(2) in which the term 'Facility' is defined as "a parcel of land, together with the structure, equipment, and improvements thereon or appertenant thereto, which is used or is being developed for the treatment, storage, or disposal of low-level radioactive waste." This is in keeping with Section 4(a)(1)(B) of P.L. 96-573, which states "low-level radioactive waste can be most safely and efficiently managed on a regional basis." Thus, temporary storage for decay, incineration (for both volume reduction and disposal), and shallow land burial are included;

each can be used, as appropriate, in LLW management activities.

The regional basis and geographical boundaries of the Southeast Compact, as defined in S.1749, are totally appropriate. Not only does this Compact include 4 of the top 10 LLW-producing states (EG&G Idaho data for CY 1982), their contiguous geographical location will tend to minimize transportation distances and costs in the safe management of LLW produced within the Compact's Party States.

The Southeast Compact defines very clearly the rights and obligations of party states, creates a strong Commission to govern its affairs, and provides for the public health and safety during the operation, stabilization and closure, post-closure observation and maintenance, and extended institutional control phases of Compact facilities. Also included is the January 1, 1986 exclusionary power date authorized by Congress in the Low-Level Radioactive Waste Policy Act, a date which the Society and the College have supported vigorously in the past. We continue our strong support for this date and would resist just as strongly any effort to change this date. We feel that a delay in implementing this provision of P.L. 96-573 would undermine the over-all compacting process.

Although the Society and the College agree reluctantly with the title of the Report by the U.S. General Accounting Office, "Regional Low-Level Radioactive Waste Disposal Sites--Progress Being Made But New Sites Will Probably Not Be Ready By 1986" (GAO/RCED-83-48, April 11, 1983), we do not believe that the probability that some states or compacts may not have a shallow land burial facility within their state or geographical area on January 1, 1986 should delay the Congressional consent to compacts already submitted for such consent, or others soon to be submitted. So long as compacts which are (or have been) submitted do not mandate exclusion on January 1, 1986 of wastes generated outside of the boundaries of regions served by these compacts, appropriate consideration of requests for access to regional sites from compacts or states without a shallow land burial facility is possible. However, we also believe that favorable consideration of requests for access to existing sites will evolve only if the compact or, rarely, the state requesting such access has shown a good-faith effort to provide for disposal capacity in their respective geographical area(s).

In summary, The Society of Nuclear Medicine and the American College of Nuclear Physicians support very strongly the consent legislation introduced by Senators Thurmond, Baker, Hollings, Helms, East, Trible, and Chiles as Senate Bill 1749. We believe this Bill to be in keeping with the provisions of P.L. 96-573 and urge its prompt passage by the Senate.

Finally, we request prompt consideration of all interstate regional low-level radioactive waste compacts by this Committee and by the Committees of the U. S. House of Representatives under whose jurisdiction they fall.

CP&L
Carolina Power & Light Company
P. O. Box 1551 • Raleigh, N. C. 27602
(919) 836-6362

SHERWOOD H. SMITH, JR.
Chairman/President

September 6, 1983

The Honorable Strom Thurmond
Chairman, Committee on Judiciary
United States Senate
Washington, D.C. 20510

Dear Senator Thurmond:

On behalf of Carolina Power & Light Company (CP&L), I appreciate this opportunity to express CP&L's support for the proposed legislation which will provide Congressional consent to the southeast interstate low-level radioactive waste management compact.

CP&L provides electric service to approximately one-fourth of the geographic area of South Carolina and approximately one-half of the area of North Carolina. CP&L serves approximately 125,000 customers in South Carolina and approximately 640,000 customers in North Carolina.

In order to provide this service, CP&L operates eight coal-fired power plants and three nuclear generating units; the latter consisting of Unit 2 of the H. B. Robinson Steam Electric Plant in Hartsville, South Carolina and the Brunswick Steam Electric Plant, Units 1 and 2 in North Carolina. CP&L is currently constructing the Shearon Harris Nuclear Power Plant in North Carolina which will consist of two generating units which are scheduled to begin commercial operation in 1986 and 1990, respectively.

The generation of electricity through the use of low cost nuclear fuel provides significant economic benefits for CP&L's customers in South Carolina and North Carolina. In order to ensure that the benefits of nuclear generation are continued, it is essential that a satisfactory program for the management and disposal of low level radioactive waste be implemented.

The concept of regional management and disposal of low level waste which was endorsed and encouraged by Congress in the Low-Level Radioactive Waste Policy Act of 1980 provides a rational and publicly acceptable means for achieving this objective. Congressional consent to the southeast interstate compact is necessary and appropriate to effectuate the intent underlying the Policy Act and is an essential step towards the implementation of a comprehensive and responsible national program for the management of both low level and high level waste in a safe, environmentally sound, efficient and equitable manner.

In view of the substantial amount of time that will be required to organize and implement the regional compacts and to develop and place into operation appropriate management and disposal facilities, it is of the utmost importance that Congress move expeditiously to provide its consent to the southeast and other regional compacts that come before the Congress for consideration. The prompt establishment of regional compacts will help to resolve issues related to availability of disposal space after 1986.

Thank you for your consideration of CP&L's views.

Sincerely,

Sherwood H. Smith, Jr.

SHSjr/dlt

CHEM-NUCLEAR SYSTEMS INC.
240 Stoneridge Drive, Suite 100 • Columbia, South Carolina 29210 • 803/256-0450

May 8, 1984
RA-0142-4

The Honorable Strom Thurmond
South Carolina Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Senator Thurmond:

Please find enclosed reponses to the questions addressed to Chem-Nuclear Systems, Inc. by the Committee in regard to the Southeast Interstate Low-Level Radioactive Waste Management Compact.

I hope these responses will provide you with the information you require.

Very truly yours,

CHEM-NUCLEAR SYSTEMS, INC.

David G. Ebenhack
Vice President
Regulatory Affairs

DGE:adc

Enclosure

1. The Barnwell site currently receives 1.2 million cubic feet of waste per year, the maximum allowed by our license from South Carolina. This disposal volume is about 20% less than the volume generated in 1984 by the states of the Southeast Compact (1). While projections of wastes that will be generated in future years are somewhat uncertain, in 1986, the Southeast region is projected to produce approximately 1.7 million cubic feet of waste. As the Barnwell site is economically viable at the current level of disposal, it is expected to be viable at the projected volumes.

2. The economic viability of a disposal site depends on the volume of waste disposed of and the fees charged for the disposal service. Economic viability must, of course, assume that the commercial operator will recover capital costs and make a profit. Typically, the smaller the volume of wastes disposed of, the higher the cost per unit disposed. A low-level site has a relatively high level of fixed cost, including site selection, licensing, and environmental monitoring, which are independant of the annual disposal amount.

   An economic analysis performed for the State of Texas indicated that a Texas only site, licensed, developed, and financed by the State of Texas, receiving 200,000 cubic feet of waste annually would be econonmically viable. A site developed, financed, and operated by a private firm would have higher costs and would charge higher fees than that projected in the Texas study.

   Analyses similar to those performed for the Texas should be required for each compact, but you might be interested in the chart we prepared for the Central States Compact in 1981.

3. Chem-Nuclear receives and disposes of 1.2 million cubic feet of waste per year. This waste can be grouped into four (4) basic categories: solid waste (paper, wood, miscellaneous trash), solidified waste (resin, filter media, solidified liquids), dewatered waste (resin, filter media), and irradiated hardware (poison curtains, steel piping and pump parts). CNSI recieves federally generated, non-weapons related waste from the U.S. Army, Navy and Air Force in the categories mentioned. During 1983, these waste generators shipped in a total of 23,568 cubic feet. Tennessee Valley Authority (TVA) shipped in 77,824 cubic feet in 1983 -- all of which was generated by power plant reactors.

4. Chem-Nuclear expects the Barnwell site to receive an increased volume of waste when it receives all the Southeast Compact waste. If the Compact restricts the site to Compact members only, we expect to receive a higher proportion of Class A waste (paper, wood, miscellaneous) since, because of cost differentials, some of that waste is being shipped by Southeast generators to the Richland, Washington site.

5. During the period from January 1982 to July 1983, a total of 5,388 disposal shipments were received at the site. Out of this total, there were 31 shipments, or 0.57%, with problems. Examples of problems were: various amounts of liquid found in disposal packages, shipments not properly braced, and package dose rates exceeding the State and/or Federal limits for shipment. Currently, problem shipments do not pose a significant hazard to the safety of the public or the operation of the site due to the nature of the problems and their numbers. There has not been a single instance in which any person related to the transportation of waste to Barnwell has received any exposure in excess of allowable limits. We do, however, expect the number of problems to decrease with the institution of the Compact since the host state can call upon the other member states to assist in resolving problems with their generators.

6. DHEC has one full-time inspector assigned to the site. However, they also have several other personnel who periodically perform various duties at the site. Inspections normally consist of site inspections, trench construction inspections, and waste inspections. Unannounced site inspections are made several times a year. Trench construction inspections are made during different phases of trench construction. Waste inspections are made at the discretion of the on-site inspectors and CNSI. CNSI has many inspection procedures to ensure license compliance and safety. Listed are some of these:

   Weekly Site Inspection

   Site management personnel are responsible for making weekly general site inspections to ensure that all license conditions are adhered to.

   Monthly Completed Trench Inspection

   Personnel are assigned to walk the completed trenches to ensure that slumping, cracks, or other abnormalities have not occured on the trenches.

   Waste Packaging Inspection

   All packages arriving at the site are externally inspected for compliance with DOT, NRC, and State regulations. In addition, an average of three shipments per month from each of the four basic categories are inspected for compliance with internal requirements.

   Environmental Sampling

   The Environmental Sampling Program consists of both on-site and off-site monitoring. This includes water sampling, around-the-clock air monitoring, and soil and vegetation sampling. DHEC has a similar program, established so that data from both can be compared for accuracy.

   Occupational Safety

   Chem-Nuclear has an effective Safety Program directed by a full-time safety manager. He is responsible for ensuring that activities are carried out safely and in compliance with OSHA regulations. He also directs employee safety training.

   Quality Assurance

   Chem-Nuclear has an extensive Quality Assurance Program which reviews the performance of all parts of the company to identify non-conformance with established specifications, procedures, and regulations.

   Safety Review Board

   The Safety Review Board, composed of health and safety professionals and operations managers within Chem-Nuclear, must review and approve all new and safety-related changes to operating procedures prior to implementation.

7. During 1983, DHEC cited CNSI for five items of non-compliance (two concerned standing rainwater on various parts of the site, two were of a record keeping nature, and one concerned improper package labeling). All the discrepancies were attended to immediately. The standing rainwater was due to the abnormal amount of rain (approximately 21 inches) received in the first quarter of 1983. This water was pumped to a special holding area located on-site and allowed to

evaporate. The record keeping discrepancy involved some trench inspection reports that had been performed, but not properly documented. Proper documentation was made and the records were placed on file. The package labeling discrepancy was the result of a container being stored on site without sufficient labeling. Initially, the container was labeled correctly; however, due to the weather, the labels were lost. The container was relabeled and moved to a more suitable area.

8. Chem-Nuclear Systems, Inc. has deeded 237 acres to the State of South Carolina. Of that, 137 acres of potential disposal area remains. This land is only assumed to be usable for disposal until after the results of a number of specific tests are evaluated. These tests are performed just prior to beginning construction of a disposal trench.

If all 137 acres are suitable for disposal, as expected, disposal volume remains at current levels, and land usage (waste disposed per acre) remains at current levels, the Barnwell site will have capacity to accept waste until 2015.

Under any reasonably anticipated set of circumstances, the Barnwell site has sufficient capacity for at least the year 2000. Under "worst case" analysis, there is sufficient disposal space to care for waste through 1995.

9. Engineered structures, either above or below ground, may be the most practical means for siteless regions to handle their low-level waste until disposal sites are developed. Since many other countries currently use engineered facilities to store low-level wastes, such facilities are demonstrably feasible. Before such a storage facility could become operational in the United States, it would have to be designed, built, and licensed for use by the Nuclear Regulatory Commission. It would be extremely difficult to accomplish this in less than two years. Given the exigencies of the licensing process, it is likely to take considerably longer.

While engineered storage is a feasible option, it is a very costly one. The cost of the structure, the cost and potential problems of rehandling the waste, and the eventual cost of transporting the waste to a disposal site, all add to the cost of waste disposal. A more attractive option may be agreements between siteless and sited regions for temporary approval to dispose of waste from the siteless regions. There are certainly a number of ways such agreements could be structured to accomplish the intent of the Low-Level Waste Policy Act.

10. Chem-Nuclear is convinced that a liberal interpretation of the provisions of the Waste Policy Act of 1980 is appropriate. "Disposal," narrowly defined, refers to final disposition of wastes. In the context of this legislation, disposal should be interpreted to permit compacting regions to provide for establishing, but not mandating use of, other management facilities such as incinerators, temporary storage structures, and other similar "non-final disposition" options.

Chem-Nuclear Systems, Inc. appreciates the concern of the Southeast compact that without the ability to restrict the transport of waste out of the region, the Compact may be unable to effectively plan and manage the regional disposal site. Chem-Nuclear is of the opinion that this waste management provision is reasonable. The Southeast Compact, as written, appears to give a state the right to dictate storage and treatment requirements to generators in each state. We feel that once provision is made by the Compact for safe disposal of low-level waste, economics as understood and judged by the generator should determine the generator's choice of waste management options.

11. Perhaps the most sensitive issues raised in the Waste Policy Act are the 1986 date and its effect. As such, an item to be considered for inclusion in the consent legislation is a reiteration of the commitment of Congress to the 1986 date. In recognition of the concern of regions without a currently operating site, it may be useful to encourage formation of intercompact agreements once Compact consent legislation is passed to deal with waste from these sitelss regions.

12. As previously discussed, we understand the need for the Southeast Compact Commission to have some waste management control, but we do not feel this control should extend to dictating the specific method or techniques used by generators for "storage" or "treatment" of low-level waste as stated in the definition.

13. Chem-Nuclear feels that the specific obligation of the Commission is to take necessary actions to provide for safe disposal and management facilities within the region. We do not believe the Commission should dictate to generators or disposal/management facility operators which techniques or methods they should use. These decisions should be determined by economic and technological factors and not by governmental or regulatory agencies.

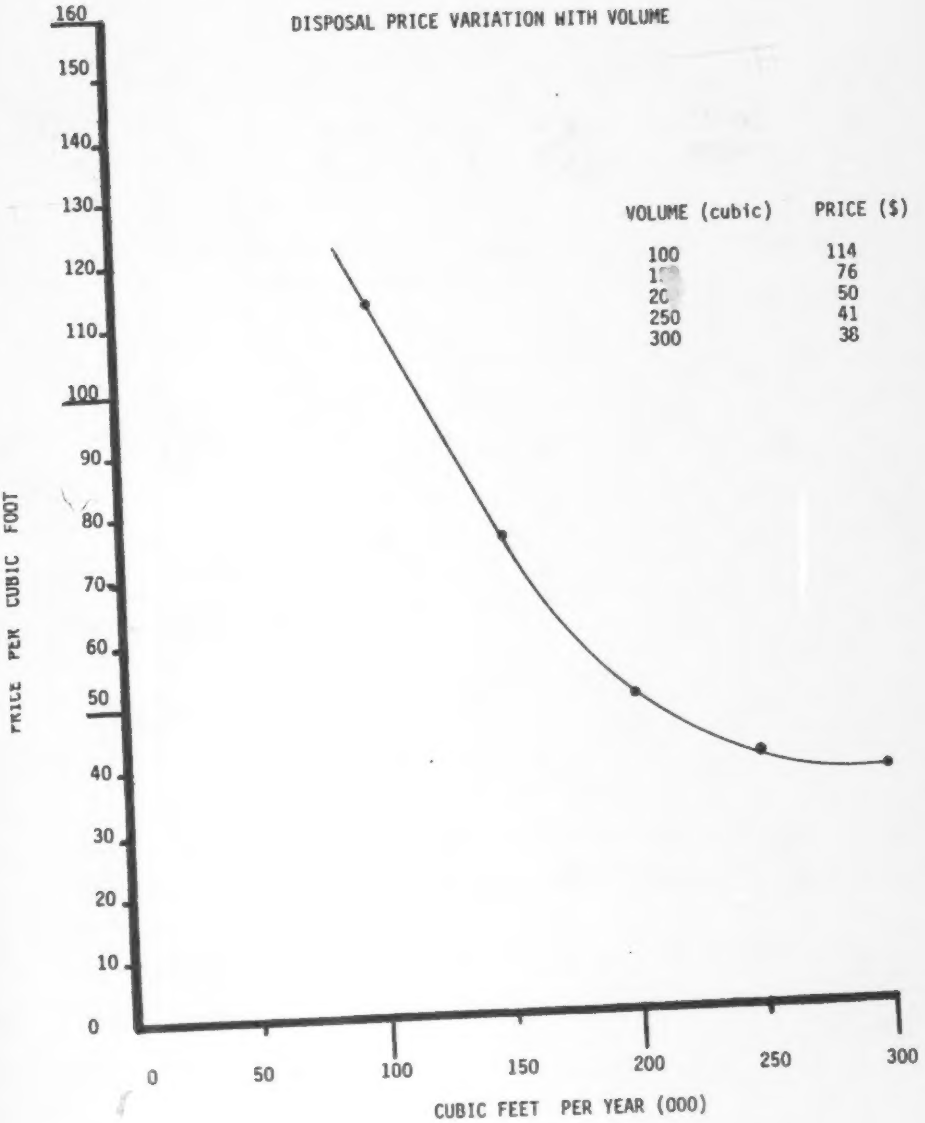
14. Chem-Nuclear's understanding of the cited provision of Article 5, paragraph (B) is that should Congress significantly alter the conditions of the Compact (for example, by changing the 1986 date or its effect or by requiring that the Compact dispose of defense activity waste generated within the region), the host state may close or restrict access to its site. In effect, if such significant alteration is made, the host state can act as if the Compact did not exist. Additionally, the host state, itself, will determine if the Compact has been significantly altered.

15. As stated earlier, Chem-Nuclear believes the 1986 date to be extremely sensitive. Since Chem-Nuclear feels that the Low-Level Radioactive Waste Policy Act is in the best interest of everyone, we would recommend that no alteration be made to the 1986 date or the exclusion provision of the Act.

References

(1) Spent Fuel and Radioactive Waste Inventories, Projections, and Characteristics, September 1983, DOE/NE-0017/2, Washington, D. C.

(2) Texas Low-Level Radioactive Waste Disposal Facility: Economic Analysis, October 1983, Texas Low-Level Radioactive Waste Disposal Authority, Austin, Texas


DISPOSAL PRICE VARIATION WITH VOLUME
VOLUME (cubic)
PRICE ($)
100
114
1[illegible]
76
20[illegible]
50
250
41
300
38
PRICE PER CUBIC FOOT
160
150
140
130
120
110
100
90
80
70
60
50
40
30
20
10
0
0
50
100
150
200
250
300
CUBIC FEET PER YEAR (000)

II

98TH CONGRESS
1ST SESSION

S. 1749

To grant the consent of the Congress to the Southeast Interstate Low-Level Radioactive Waste Management Compact.

IN THE SENATE OF THE UNITED STATES

AUGUST 3 (legislative day, AUGUST 1), 1983

Mr. THURMOND (for himself, Mr. BAKER, Mr. HOLLINGS, Mr. HELMS, Mr. EAST, Mr. TRIBLE, and Mr. CHILES) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

A BILL

To grant the consent of the Congress to the Southeast Interstate Low-Level Radioactive Waste Management Compact.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in accordance with section 4(a)(2) of the Low-Level Radioactive Waste Policy Act (42 U.S.C. 2021d(a)(2)), the consent of the Congress hereby is given to the States of Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia to enter into the Southeast Interstate Low-Level Radioactive Waste Management Compact. Such compact is substantially as follows:

"SOUTHEAST INTERSTATE LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT COMPACT

"ARTICLE 1

"POLICY AND PURPOSE

"There is hereby created the Southeast Interstate Low-Level Radioactive Waste Management Compact. The party states recognize and declare that each state is responsible for providing for the availability of capacity either within or outside the state for disposal of low-level radioactive waste generated within its borders, except for waste generated as a result of defense activities of the federal government or federal research and development activities. They also recognize that the management of low-level radioactive waste is handled most efficiently on a regional basis. The party states further recognize that the Congress of the United States, by enacting the Low-Level Radioactive Waste Policy Act (Public Law 96–573), has provided for and encouraged the development of low-level radioactive waste compacts as a tool for disposal of such waste. The party states recognize that the safe and efficient management of low-level radioactive waste generated within the region requires that sufficient capacity to dispose of such waste be properly provided.

"It is the policy of the party states to: enter into a regional low-level radioactive waste management compact for the purpose of providing the instrument and framework for a cooperative effort; provide sufficient facilities for the proper management of low-level radioactive waste generated in the region; promote the health and safety of the region; limit the number of facilities required to effectively and efficiently manage low-level radioactive waste generated in the region; encourage the reduction of the amounts of low-level waste generated in the region; distribute the costs, benefits, and obligations of successful low-level radioactive waste management equitably among the party states; and ensure the ecological and economical management of low-level radioactive wastes.

"Implicit in the congressional consent to this compact is the expectation by Congress and the party states that the appropriate federal agencies will actively assist the Compact Commission and the individual party states to this compact by:

"(1) expeditious enforcement of federal rules, regulations, and laws;

"(2) imposing sanctions against those found to be in violation of federal rules, regulations, and laws;

"(3) timely inspection of their licensees to determine their capability to adhere to such rules, regulations, and laws; and

"(4) timely provision of technical assistance to this compact in carrying out their obligations under the Low-Level Radioactive Waste Policy Act, as amended.

"ARTICLE 2

"DEFINITIONS

"As used in this compact, unless the context clearly requires a different construction:

"(1) 'Commission' or 'Compact Commission' means the Southeast Interstate Low-Level Radioactive Waste Management Commission.

"(2) 'Facility' means a parcel of land, together with the structure, equipment, and improvements thereon or appurtenant thereto, which is used or is being developed for the treatment, storage, or disposal of low-level radioactive waste.

"(3) 'Generator' means any person who produces or processes low-level radioactive waste in the course of, or as an incident to, manufacturing, power generation, processing, medical diagnosis and treatment, research, or other industrial or commercial activity. This does not include persons who provide a service to generators by arranging for the collection, transportation, storage, or disposal of wastes with respect to such waste generated outside the region.

"(4) 'High-level waste' means irradiated reactor fuel, liquid wastes from reprocessing irradiated reactor fuel, and solids into which such liquid wastes have been converted, and other high-level radioactive waste as defined by the U.S. Nuclear Regulatory Commission.

"(5) 'Host state' means any state in which a regional facility is situated or is being developed.

"(6) 'Low-level radioactive waste' or 'waste' means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or by-product material as defined in Section 11e. of the Atomic Energy Act of 1954, or as may be further defined by federal law or regulation.

"(7) 'Party state' means any state which is a signatory party to this compact.

"(8) 'Person' means any individual, corporation, business enterprise, or other legal entity (either public or private).

"(9) 'Region' means the collective party states.

"(10) 'Regional facility' means (1) a facility as defined in this article which has been designated, authorized, accepted, or approved by the Commission to receive waste or (2) the disposal facility in Barnwell County, South Carolina, owned by the State of South

Carolina and as licensed for the burial of low-level radioactive waste on July 1, 1982, but in no event shall this disposal facility serve as a regional facility beyond December 31, 1992.

"(11) 'State' means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, or any other territorial possession of the United States.

"(12) 'Transuranic wastes' means waste material containing transuranic elements with contamination levels as determined by the regulations of (1) the U.S. Nuclear Regulatory Commission or (2) any host state, if it is an agreement state under section 274 of the Atomic Energy Act of 1954.

"(13) 'Waste management' means the storage, treatment, or disposal or waste.

"ARTICLE 3

"RIGHTS AND OBLIGATIONS

"The rights granted to the party states by this compact are additional to the rights enjoyed by sovereign states, and nothing in this compact shall be construed to infringe upon, limit, or abridge those rights.

"(A) Subject to any license issued by the U.S. Nuclear Regulatory Commission or a host state, each party state shall have the right to have all wastes generated within its borders stored, treated, or disposed of, as applicable, at regional facilities and, additionally, shall have the right of access to facilities made available to the region through agreements entered into by the Commission pursuant to Article 4(E)(9). The right of access by a generator within a party state to any regional facility is limited by its adherence to applicable state and federal law and regulation.

"(B) If no operating regional facility is located within the borders of a party state and the waste generated within its borders must therefore be stored, treated, or disposed of at a regional facility in another party state, the party state without such facilities may be required by the host state or states to establish a mechanism which provides compensation for access to the regional facility according to terms and conditions established by the host state or states and approved by a two-thirds vote of the Commission.

"(C) Each party state must establish the capability to regulate, license, and ensure the maintenance and extended care of any facility within its borders. Host states are responsible for the availability, the subsequent post-closure observation and maintenance, and the extended institutional control of their regional facilities in accordance with the provisions of Article 5(B).

"(D) Each party state must establish the capability to enforce any applicable federal or state laws and regulations pertaining to the packaging and transportation of waste generated within or passing through its borders.

"(E) Each party state must provide to the Commission on an annual basis any data and information necessary to the implementation of the Commission's responsibilities. Each party state shall establish the capability to obtain any data and information necessary to meet its obligations.

"(F) Each party state must, to the extent authorized by federal law, require generators within its borders to use the best available waste management technologies and practices to minimize the volumes of waste requiring disposal.

"ARTICLE 4

"THE COMMISSION

"(A) There is hereby created the Southeast Interstate Low-Level Radioactive Waste Management Commission ('Commission' or 'Compact Commission'). The Commission shall consist of two voting members from each party state to be appointed according to the laws of each state. The appointing authorities of each state must notify the Commission in writing of the identity of its members and any alternates. An alternate may act on behalf of the member only in the member's absence.

"(B) Each Commission member is entitled to one vote. No action of the Commission shall be binding unless a majority of the total membership cast their vote in the affirmative, or unless a greater than majority vote is specifically required by any other provision of this compact.

"(C) The Commission must elect from among its members a presiding officer. The Commission shall adopt and publish, in convenient form, bylaws which are consistent with this compact.

"(D) The Commission must meet at least once a year and also meet upon the call of the presiding officer, by petition of a majority of the party states, or upon the call of a host state. All meetings of the Commission must be open to the public.

"(E) The Commission has the following duties and powers:

"(1) To receive and approve the application of a nonparty state to become an eligible state in accordance with the provisions of Article 7(B).

"(2) To receive and approve the application of a nonparty state to become an eligible state in accordance with the provisions of Article 7(C).

"(3) To submit an annual report and other communications to the Governors and to the presiding officer of each body of the legislature of the party states regarding the activities of the Commission.

"(4) To develop and use procedures for determining, consistent with consideration for public health and safety, the type and number of regional facilities which are presently necessary and which are projected to be necessary to manage waste generated within the region.

"(5) To provide the party states with reference guidelines for establishing the criteria and procedures for evaluating alternative locations for emergency or permanent regional facilities.

"(6) To develop and adopt, within one year after the Commission is constituted as provided in Article 7(D) procedures and criteria for identifying a party state as a host state for a regional facility as determined pursuant to the requirements of this article. In accordance with these procedures and criteria, the Commission shall identify a host state for the development of a second regional disposal facility within three years after the Commission is constituted as provided for in Article 7(D), and shall seek to ensure that such facility is licensed and ready to operate as soon as required but in no event later than 1991.

"In developing criteria, the Commission must consider the following: the health, safety, and welfare of the citizens of the party states; the existence of regional facilities within each party state; the minimization of waste transportation; the volume and types of wastes generated within each party state; and the environmental, economic, and ecological impacts on the air, land, and water resources of the party states.

"The Commission shall conduct such hearings, require such reports, studies, evidence, and testimony, and do what is required by its approved procedures in order to identify a party state as a host state for a needed facility.

"(7) In accordance with the procedures and criteria developed pursuant to Section (E)(6) of this Article, to designate, by a two-thirds vote, a host state for the establishment of a needed regional facility. The Commission shall not exercise this authority unless the party states have failed to voluntarily pursue the development of such facility. The Commission shall have the authority to revoke the membership of a party state that willfully creates barriers to the sitting of a needed regional facility.

(8) To require of and obtain from party states, eligible states seeking to become party states, and nonparty states seeking to become eligible states, data and information necessary to the implementation of Commission responsibilities.

"(9) Notwithstanding any other provision of this compact, to enter into agreements with any person, state, or similar regional body or group of states for the importation of waste into the region and for the right of access to facilities outside the region for waste generated within the region. The authorization to import requires a two-thirds majority vote of the Commission, including an affirmative vote of both representatives of a host state in which any affected regional facility is located. This shall be done only after an assessment of the affected facility's capability to handle such wastes.

"(10) To act or appear on behalf of any party state or states, only upon written request of both members of the Commission for such state or states as an intervenor or party in interest before Congress, state legislatures, any court of law, or any federal, state, or local agency, board, or commission which has jurisdiction over the management of wastes. The authority to act, intervene, or otherwise appear shall be exercised by the Commission, only after approval by a majority vote of the Commission.

"(11) To revoke the membership of a party state in accordance with Article 7(F).

"(F) The Commission may establish any advisory committees as it deems necessary for the purpose of advising the

Commission on any matters pertaining to the management of low-level radioactive waste.

"(G) The Commission may appoint or contract for and compensate such limited staff necessary to carry out its duties and functions. The staff shall serve at the Commission's pleasure irrespective of the civil service, personnel, or other merit laws of any of the party states or the federal government and shall be compensated from funds of the Commission. In selecting any staff, the Commission shall assure that the staff has adequate experience and formal training to carry out such functions as may be assigned to it by the Commission. If the Commission has a headquarters it shall be in a party state.

"(H) Funding for the Commission must be provided as follows:

"(1) Each eligible state, upon becoming a party state, shall pay twenty-five thousand dollars to the Commission which shall be used for costs of the Commission's services.

"(2) Each state hosting a regional disposal facility shall annually levy special fees or surcharges on all users of such facility, based upon the volume of wastes disposed of at such facilities, the total of which:

"(a) must be sufficient to cover the annual budget of the Commission;

"(b) must represent the financial commitments of all party states to the Commission; and

"(c) must be paid to the Commission;

Provided, however, That each host state collecting such fees or surcharges may retain a portion of the collection sufficient to cover its administrative costs of collection and that the remainder be sufficient only to cover the approved annual budgets of the Commission.

"(3) The Commission must set and approve its first annual budget as soon as practicable after its initial meeting. Host states for disposal facilities must begin imposition of the special fees and surcharges provided for in this section as soon as practicable after becoming party states and must remit to the Commission funds resulting from collection of such special fees and surcharges within sixty days of their receipt.

"(I) The Commission must keep accurate accounts of all receipts and disbursements. An independent certified public accountant shall annually audit all receipts and disbursements of Commission funds and submit an audit report to the Commission. The audit report shall be made a part of the annual report of the Commission required by Article 4(E)(3).

"(J) The Commission may accept for any of its purposes and functions any and all donations, grants of money, equipment, supplies, materials, and services (conditional or otherwise) from any state, or the United States, or any subdivision or agency thereof, or interstate agency, or from any institution, person, firm, or corporation, and may receive, utilize, and dispose of the same. The nature, amount, and condition, if any, attendant upon any donation or grant accepted pursuant to this section, together with the identity of the donor, grantor, or lender shall be detailed in the annual report to the Commission.

"(K) The Commission is not responsible for any costs associated with:

"(1) the creation of any facility;

"(2) the operation of any facility;

"(3) the stabilization and closure of any facility;

"(4) the post-closure observation and maintenance of any facility; or

"(5) the extended institutional control, after post-closure observation and maintenance of any facility.

"(L) As of January 1, 1986, the management of wastes at regional facilities is restricted to wastes generated within the region, and to wastes generated within nonparty states when authorized by the Commission pursuant to the provisions of this compact. After January 1, 1986, the Commission may prohibit the exportation of waste from the region for the purposes of management.

"(M)(1) The Commission herein established is a legal entity separate and distinct from the party states capable of acting in its own behalf and is liable for its actions. Liabilities of the Commission shall not be deemed liabilities of the party states. Members of the Commission shall not personally be liable for action taken by them in their official capacity.

"(2) Except as specifically provided in this compact, nothing in this compact shall be construed to alter the incidence of liability of any kind for any act, omission, course of conduct, or on account of any casual or other relationships. Generators and transporters of wastes and owners and operators of sites shall be liable for their acts, omissions, conduct, or relationships in accordance with all laws relating thereto.

"ARTICLE 5

"DEVELOPMENT AND OPERATION OF FACILITIES

"(A) Any party state which becomes a host state in which a regional facility is operated shall not be designated by the Compact Commission as a host state for an additional regional facility until each party state has fulfilled its obligation, as determined by the Commission, to have a regional facility operated within its borders.

"(B) A host state desiring to close a regional facility located within its borders may do so only after notifying the Commission in writing of its intention to do so and the reasons therefor. Such notification shall be given to the Commission at least four years prior to the intended date of closure. Notwithstanding the four-year notice requirement herein provided, a host state is not prevented from closing its facility or establishing conditions of its use and operations as necessary for the protection of the health and safety of its citizens. A host state may terminate or limit access to its regional facility if it determines that Congress has materially altered the conditions of this compact.

"(C) Each party state designated as a host state for a regional facility shall take appropriate steps to ensure that an application for a license to construct and operate a facility of the designated type is filed with and issued by the appropriate authority.

"(D) No party state shall have any form of arbitrary prohibition on the treatment, storage, or disposal of low-level radioactive waste within its borders.

"ARTICLE 6

"OTHER LAWS AND REGULATIONS

"(A) Nothing in this compact shall be construed to:

"(1) Abrogate or limit the applicability of any Act of Congress or diminish or otherwise impair the jurisdiction of any federal agency expressly conferred thereon by the Congress.

"(2) Abrogate or limit the regulatory responsibility and authority of the United States Nuclear Regulatory Commission or of an agreement state under section 274 of the Atomic Energy Act of 1954 in which a regional facility is located.

"(3) Make inapplicable to any person or circumstance any other law of a party state which is not inconsistent with this compact.

"(4) Make unlawful the continued development and operation of any facility already licensed for development or operation on the date this compact becomes effective, except that any such facility shall comply with Article 3, Article 4, and Article 5 and shall be subject to any action lawfully taken pursuant thereto.

"(5) Prohibit any storage or treatment of waste by the generator on its own premises.

"(6) Affect any judicial or administrative proceeding pending on the effective date of this compact.

"(7) Alter the relations between, and the respective internal responsibilities of, the government of a party state and its subdivisions.

"(8) Affect the generation, treatment, storage, or disposal of waste generated by the atomic energy defense activities of the Secretary of the United States Department of Energy or federal research and development activities as defined in Public Law 96–573.

"(9) Affect the rights and powers of any party state and its political subdivisions to regulate and license any facility within its borders or to affect the rights and powers of any party state and its political subdivisions to tax or impose fees on the waste managed at any facility within its borders.

"(B) No party state shall pass any law or adopt any regulation which is inconsistent with this compact. To do so may jeopardize the membership status of the party state.

"(C) Upon formation of the compact no law or regulation of a party state or of any subdivision or instrumentality thereof may be applied so as to restrict or make more inconvenient access to any regional facility by the generators of another party state than for the generators of the state where the facility is situated.

"(D) Restrictions of waste management of regional facilities pursuant to Article 4 shall be enforceable as a matter of state law.

"ARTICLE 7

"ELIGIBLE PARTIES; WITHDRAWAL; REVOCATION; ENTRY INTO FORCE; TERMINATION

"(A) This compact shall have as initially eligible parties the States of Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia.

"(B) Any state not expressly declared eligible to become a party state to this compact in Section (A) of this Article may petition the Commission, once constituted, to be declared eligible. The Commission may establish such conditions as it deems necessary and appropriate to be met by a state wishing to become eligible to become a party state to this compact pursuant to such provisions of this section. Upon satisfactorily meeting the conditions and upon the affirmative vote of two-thirds of the Commission, including the affirmative vote of both representatives of a host state in which any affected regional facility is located, the petitioning state shall be eligible to become a party state to this compact and may become a party state in the manner as those states declared eligible in Section (A) of this Article.

"(C) Each state eligible to become a party state to this compact shall be declared a party state upon enactment of this compact into law by the state and upon payment of the fees required by Article 4(H)(1). The Commission is the judge of the qualifications of the party states and of its members and of their compliance with the conditions and requirements of this compact and the laws of the party states relating to the enactment of this compact.

"(D)(1) The first three states eligible to become party states to this compact which enact this compact into law and appropriate the fees required by Article 4(H)(1) shall immediately, upon the appointment of their Commission members, constitute themselves as the Southeast Low-Level Radioactive Waste Management Commission; shall cause legislation to be introduced in Congress which grants the consent of Congress to this compact; and shall do those things necessary to organize the commission and implement the provisions of this compact.

"(2) All succeeding states eligible to become party states to this compact shall be declared party states pursuant to the provisions of Section (C) of this Article.

"(3) The consent of Congress shall be required for the full implementation of this compact. The provisions of Article 5(D) shall not become effective until the effective date of the import ban authorized by Article 4(L) as approved by Congress. Congress may by law withdraw its consent only every five years.

"(E) No state which holds membership in any other regional compact for the management of low-level radioactive waste may be considered by the Compact Commission for eligible state status or party state status.

"(F) Any party state which fails to comply with the provisions of this compact or to fulfill the obligations incurred by becoming a party state to this compact may be subject to sanctions by the Commission, including suspension of its rights under this compact and revocation of its status as a party state. Any sanction shall be imposed only upon the affirmative vote of at least two-thirds of the Commission members. Revocation of party state status may take effect on the date of the meeting at which the Commission approves the resolution imposing such sanction, but in no event shall revocation take effect later than ninety days from the date of such meeting. Rights and obligations incurred by being declared a party state to this compact shall continue until the effective date of the sanction imposed or as provided in the resolution of the Commission imposing the sanction.

"The Commission must, as soon as practicable after the meeting at which a resolution revoking status as a party state is approved, provide written notice of the action, along with a copy of the resolution, to the Governors, the Presidents of the Senates, and the Speakers of the Houses of Representatives of the party states, as well as chairmen of the appropriate committees of Congress.

"(G) Any party state may withdraw from the compact by enacting a law repealing the compact: *Provided*, That if a regional facility is located within such a state, such regional facility shall remain available to the region for four years after the date the Commission receives notification in writing from the governor of such party state of the recision of the compact. The Commission, upon receipt of the notification, shall as soon as practicable provide copies of such notification to the Governors, the Presidents of the Senates, and the Speakers of the Houses of Representatives of the party states as well as the chairmen of the appropriate committees of Congress.

"(H) This compact may be terminated only by the affirmative action of Congress or by the recision of all laws enacting the compact in each party state.

"ARTICLE 8

"PENALTIES

"(A) Each party state, consistently with its own law, shall prescribe and enforce penalties against any person not an official of another state for violation of any provisions of this compact.

"(B) Each party state acknowledges that the receipt by a host state of waste packaged or transported in violation of applicable laws and regulations can result in the imposition of sanctions by the host state which may include suspension or revocation of the violator's right of access to the facility in the host state.

"ARTICLE 9

"SEVERABILITY AND CONSTRUCTION

"The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared by a court of competent jurisdiction to be contrary to the constitution of any participating state or of the United

States, or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any other government, agency, person, or circumstance shall not be affected thereby. If any provision of this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the state affected as to all severable matters. The provisions of this compact shall be liberally construed to give effect to the purposes thereof.".

SEC. 2. Nothing contained in this Act or in the compact consented to in this Act may be construed as impairing or otherwise affecting in any manner any right or jurisdiction of the United States with respect to the region that is the subject of such compact.

SEC. 3. The right of the Congress to alter, amend, or repeal this Act is expressly reserved.